

No. 11925

United States
Circuit Court of Appeals
For the Ninth Circuit.

MATSON NAVIGATION COMPANY,
A Corporation,
Appellant,
vs.

WAR DAMAGE CORPORATION, a Corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

JUN 24 1948

PAUL P. O'BRIEN,

CLERK

No. 11925

United States
Circuit Court of Appeals
For the Ninth Circuit.

MATSON NAVIGATION COMPANY,
A Corporation,
Appellant,
vs.

WAR DAMAGE CORPORATION, a Corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	7
Defendant's Exhibits:	
A—Regulations A.....	23
B—Resolution	43
C—Insurance Policy (WDC Form No. 1).....	48
D—Notice of 12/30/42, Secretary of Commerce	57
Appeal:	
Certificate of Clerk to Transcript of Rec- ord on.....	92
Designation (DC) of Contents of Rec- ord on.....	88
Notice of.....	87
Order (DC) Extending Time to File Rec- ord and Docket.....	89, 90
Statement of the Points Upon Which the Appellant Intends to Rely on the.....	377
Stipulation Designating Portions of the Record on Appeal to Be Included in Printed Record on.....	379
Certificate of Clerk to Transcript of Record on Appeal.....	92

INDEX	PAGE
Complaint for Compensation for Loss of Personal Property in Transit as a Result of Enemy Attack.....	2
Exhibit A—Letter 1/19/45 to M. Price /s/ M. W. Knarr.....	6
Deposition of Hans O. Matthiesen.....	208
—direct	210
—cross	223
—redirect	234, 240, 243
—recross	235, 242, 243
Plaintiff's Exhibit No. 1 for Identification.	244
Depositions of George Inselman, M. M. Pease, Howard W. Cann and Harold L. Wayne....	248
Cann, Howard W.	
—direct	269
—cross	271
—redirect	273
Inselman, George	
—direct	249
—cross	255
Pease, M. M.	
—direct	265
—cross	266
Wayne, Harold L.	
—direct	274
—cross	282
—redirect	291
—recross	291

INDEX	PAGE
Depositions of Mr. Matthias W. Knarr and Robert C. Goodale.....	293
Goodale, Robert C.	
—direct	316
—cross	332
—redirect	357
Knarr, Matthias W.	
—direct	294
—cross	308
—redirect	314
—recross	316
Exhibits for Defendant:	
No. 1—Regulations “A” (identical with Defendant’s Exhibit A in Answer)	23
2—Amendment to Regulations “A,” Effective 7/1/42.....	361
3—Amendment to Regulations “A,” Effective 10/1/42.....	363
4—Minutes of a Meeting of the Executive Committee of War Damage Corporation, 10/2/44.	365
5—Notice 12/30/42, Secretary of Commerce	374
Designation of Contents of Record on Appeal..	88
Exhibit for the Plaintiff No. 1—Agreement Be- tween Various Steamship Companies and the National Maritime Union of America.....	375

INDEX	PAGE
Findings of Fact and Conclusions of Law.....	81
Conclusions of Law.....	84
Findings of Fact.....	82
Judgment	85
Minute Orders:	
11/17/47—For Judgment.....	80
12/12/47—Findings of Fact and Conclusions of Law Filed.....	81
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	87
Notice of Entry of Judgment.....	86
Notice of Entry of Opinion.....	80
Opinion	64
Order (DC) Extending Time to File Record and Docket Appeal.....	89-90
Order for Transmission of Original Exhibit to the Circuit Court of Appeals.....	91
Reporter's Transcript.....	93
Witnesses for Defendant:	
Galbreath, Fred	
—direct	141
—cross	148
—redirect	155
Knowles, Alfred B.	
—direct	128
—cross	137

INDEX

PAGE

Witnesses for Plaintiff:

Prentiss, Theron L.

—direct 178

—cross 180

Price, Melvin

—direct 182

—cross 184

Statement of the Points Upon Which the Appellant Intends to Rely on the Appeal in the Above-Entitled Cause..... 377

Stipulation Amending Answer..... 57

Stipulation Designating Portions of the Record on Appeal to Be Included in Printed Record on Appeal..... 379

Stipulation Plaintiff Had No War Risk Insurance 61

Stipulation Relative to New York Journal of Commerce Article..... 61

Exhibit A—New York Journal of Commerce Article..... 63

Stipulation Relative to Value of Steamship Lahaina 60

NAMES AND ADDRESSES OF ATTORNEYS

HALL, HENRY & OLIVER,

1200 Balfour Bldg.,

San Francisco,

BROBECK, PHLEGER & HARRISON,

111 Sutter St.,

San Francisco,

Attorneys for Appellant.

LILLICK, GEARY, OLSON,

ADAMS & CHARLES,

311 California St.,

San Francisco,

Attorneys for Appellee.

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 24575—G

MATSON NAVIGATION COMPANY,

a corporation,
Plaintiff,

vs.

WAR DAMAGE CORPORATION, a corporation,
Defendant.

COMPLAINT FOR COMPENSATION FOR
LOSS OF PERSONAL PROPERTY IN
TRANSIT AS A RESULT OF ENEMY
ATTACK

Plaintiff complains of defendant above named and
for cause of action alleges:

I.

That plaintiff was at all of the times herein mentioned, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California with principal office and place of business at 215 Market Street in the City and County of San Francisco, State of California.

II.

That on and prior to the 12th day of December, 1941, plaintiff was the owner of the American steam-

ship Lahaina which [1*] said vessel was at said time in transit between a port or ports of the Hawaiian Islands and a port of the continental United States. That on the 11th day of December, 1941, said steamship was shelled and seriously damaged by enemy attack, to wit, by attack of a submarine belonging to the Empire of Japan, a public enemy of the United States. That as a result of said shelling the said steamship sank in the waters of the Pacific Ocean a great distance from shore on December 12, 1941, and was and is totally lost to plaintiff.

III.

That defendant, War Damage Corporation, is a corporation organized and existing pursuant to the provisions of section 5d of the Reconstruction Finance Corporation Act of January 22, 1932, 47 State. 5, as amended, supplemented and revised. Said corporation was originally incorporated under the name War Insurance Corporation. On March 30, 1942, by an amendment of its Articles of Incorporation the name of said corporation was changed to War Damage Corporation. Under its Articles of Incorporation such defendant has power to sue and be sued in any Court of competent jurisdiction. Plaintiff is informed and believes that the Government of the United States of America is the owner of more than one-half of the capital stock of such defendant.

*Page numbering appearing at foot of page of original certified Transcript of Record.

IV.

That on December 13, 1941, the Federal Loan Administrator publicly announced that, with the approval of the President, the Reconstruction Finance Corporation had created the War Insurance Corporation "to provide reasonable protection against losses resulting from enemy attacks which may be sustained by owners of property in Continental United States through damage to or destruction of buildings, structures and personal property, [2] including goods, growing crops and orchards. Pending completion of details, any such losses will be protected from December 13, 1941, up to a total of \$1,000,000,000. Accounts, bills, currency, debts, evidences of debt, money, notes, securities, paintings and objects of art will not be covered. For the time being no premium will be charged for this protection, and no declaration or report required unless there is a loss." (Press release of the Federal Loan Agency No. 634.) On December 22, 1941, the Federal Loan Administrator publicly announced that, with the approval of the President, the War Insurance Corporation would extend the same protection to property owners in Alaska, Hawaii, the Philippine Islands and Porto Rico and the Virgin Islands as it does to property owned in Continental United States. (Press release of the Federal Loan Agency No. 636.)

V.

That in March, 1942, the Congress of the United States enacted and on March 27, 1942, the President

approved, a law amending the Reconstruction Finance Corporation Act and therein provided that the War Damage Corporation should make compensation for any loss of or damage to property, real and personal, situated in the United States (including the several States and District of Columbia), the Philippine Islands, the Canal Zone, the territories and possessions of the United States or in transit between any points located in any of said places, sustained as a result of or from enemy attack, subsequent to December 6, 1941, and prior to a date thereafter, to wit, after March 27, 1942, to be determined by the Secretary of Commerce (Ch. 198, Section 2, 56 Stat. 175; U. S. Code, Title 15, Section 606b-2).

VI.

That as a result of the loss of the said S.S. Lashaina as [3] above set forth, plaintiff sustained loss in the amount of Eight Hundred Twenty Thousand Dollars (\$820,000.00) and on or about the 29th day of December, 1944, duly made and presented to defendant its claim in such amount on account of its aforesaid loss. On or about the 19th day of January, 1945, defendant, War Damage Corporation, informed plaintiff that such claim would not be recognized. That a copy of said letter declining such claim is attached hereto and marked Exhibit "A" and by this reference incorporated herein. That defendant, War Damage Corporation, has not compensated plaintiff for its said loss or any part thereof and there is now due, owing and unpaid to plaintiff by defendant said sum with interest.

VII.

That plaintiff's action herein arises under the said Reconstruction Finance Corporation Act as amended, supplemented and revised and the matter in controversy exceeds the sum of \$3,000.00. Jurisdiction exists under and by virtue of section 24, par. 1, of the Judicial Code, (18 Stat. 470, as amended; 28 U. S. Code, sec. 41(1)) and the Act of February 13, 1925, C. 229, sec. 12 (43 Stat. 941; 28 U. S. Code, sec. 42).

Wherefore, plaintiff prays judgment against defendant in the sum of Eight Hundred Twenty Thousand Dollars (\$820,000.00) together with interest thereon and costs of suit herein incurred, and that plaintiff shall have such other and further relief as may be meet and proper in the aforesaid premises.

Dated: March 22nd, 1945.

LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff [4]

EXHIBIT "A"

War Damage Corporation
Washington 25

January 19, 1945.

Mr. Melvin Price
Matson Navigation Company
215 Market Street
San Francisco 5, California
SS Lahaina

Dear Mr. Price:

Acknowledgment is made of your letter of December 29, 1944.

The statutory provisions regarding property in transit to which you refer are not interpreted by this Corporation as intended to have application to vessels, and, pursuant to authority contained in the Act, all vessels and water-craft other than (a) those used exclusively for storage, housing, manufacturing or generating power, (b) vessels while under construction, until delivery by the builder or sailing on delivery or trial trip, whichever shall first occur, and (c) pleasure water-craft while laid up afloat or ashore, have, with the approval of the Secretary of Commerce, been excluded from the protection authorized by the Act of March 27, 1942. It is, therefore, impossible for this Corporation to recognize the claim stated in your letter.

Very truly yours,

/s/ M. W. KNARR,
Secretary.

[Endorsed]: Filed Mar. 22, 1945 [5]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, and in answer to the Complaint herein, admits, denies and alleges as follows:

I.

Admits the allegations of Paragraph I of the Complaint.

II.

Admits the allegations of Paragraph II of plaintiff's Complaint except denies that the Steamship

Lahaina, on the 12th day of December, 1941, or at any other time, was "in transit" between a port or ports of the Hawaiian Islands and a port of the continental United States within the meaning of Section 5-g of the Reconstruction Finance Corporation Act as added by the Act of March 27, 1942 (Chapter 198, Section 2, 56 Stat. 175; U. S. Code, Title 15, Section 606b-2). [6]

III.

Denies each and every, all and singular, generally and specifically the allegations of paragraph III except admits that War Damage Corporation is a corporation organized and existing pursuant to the provisions of Sections 5d and 5g of the Reconstruction Finance Corporation Act, as amended; admits that the entire capital stock of the defendant is owned by the Government of the United States; admits that the defendant was originally incorporated under the name of War Insurance Corporation which said name was changed to War Damage Corporation by an amendment of its Articles of Incorporation on March 30, 1942; admits that under its Articles of Incorporation defendant in some instances has the power to sue and be sued in courts of competent jurisdiction; denies that the power to sue and be sued granted by defendant's Articles of Incorporation authorizes or permits defendant to be sued on the matters set forth in plaintiff's Complaint and in this connection alleges that its power to sue and be sued is restricted to its business and commercial functions, engagements,

contracts and/or undertakings; that the claim for relief set forth in the Complaint herein is not predicated upon any business or commercial function, engagement, contract and/or undertaking.

IV.

Admits the allegations of Paragraph IV of the Complaint, but in this connection alleges that the public announcements referred to in said Paragraph IV have no application to the claim for relief set forth in plaintiff's Complaint.

Further answering Paragraph IV of the Complaint, defendant alleges that the public announcement of December 13, 1941 (Press Release of the Federal Loan Agency No. 634) and the public announcement of December 22, 1941 (Press Release of the Federal [7] Loan Agency No. 636) both provide in the last paragraphs thereof, as follows:

“Other terms and conditions for such protection will be announced as established.”

V.

Answering the allegations of Paragraph V of plaintiff's Complaint admits that in March, 1942, the Congress of the United States enacted, and on March 27, 1942, the President approved, a law amending the Reconstruction Finance Corporation Act, which law is designated as Ch. 198, Section 2, 56 Stat. 175; U. S. Code, Title 15, Section 606b-2; denies that said statute is correctly stated by plaintiff and accordingly denies each and every, all and singular, generally and specifically, the allegations of said paragraph not hereinabove admitted and

in this connection alleges that said statute provides as follows:

“The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to section 5d of this Act; and the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this subsection. Such funds shall be supplied only upon request of the Secretary of Commerce, with the approval of the President, and the aggregate amount of the funds so supplied shall not exceed \$1,000,000,000. The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which shall not be later than

July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made [8] available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico; provided, that such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary

of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such damage.

Approved March 27, 1942.

VI.

Answering the allegations of Paragraph VI of the Complaint, alleges that defendant has no information or belief sufficient to permit it to answer the allegation that as a result of the loss of the SS Lahaina plaintiff sustained a loss in the amount Eight Hundred Twenty Thousand (\$820,000.00) Dollars or in any sum for the loss of the SS Lahaina; admits that it denied said claim and that the copy of the letter attached to and incorporated

in the Complaint and marked "Exhibit A" is a true copy of its letter of January 19, 1945, denying said claim; admits that it has not compensated plaintiff for its said loss or any part thereof; denies that plaintiff on or about December 29, 1944, or at any time "duly" made and/or [9] presented its claim for such loss and in this connection alleges that such claim was not presented to defendant within the time required by the Public Announcement of December 30, 1942, as more fully set forth and alleged herein in the Tenth Separate and Affirmative defense, and further alleges that plaintiff did not comply with the "Requirements in Case of Loss" set forth on page 2 of defendant's standard insurance policy (W.D.C. Form No. 1) as more fully set forth and alleged herein in the Ninth Separate and Affirmative Defense; denies that there is now due, owing and unpaid to plaintiff by defendant the sum of Eight Hundred Twenty Thousand (\$820,000.00) Dollars or any part thereof or any sum at all.

VII.

Denies each and every, all and singular, generally and specifically the allegations of Paragraph VII of the Complaint except admits that the amount sued for in the Complaint exceeds the sum of Three Thousand (\$3,000.00) Dollars.

By way of separate and affirmative defenses to plaintiff's Complaint, defendant alleges:

First Separate and Affirmative Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Separate and Affirmative Defense

The court is without jurisdiction in the matter because the said Reconstruction Finance Corporation Act, and particularly Section 5g thereof, restricts plaintiff's remedy to an administrative remedy, if any.

Third Separate and Affirmative Defense

The court is without jurisdiction in the matter because [10] jurisdiction of the action pleaded has not been given to the courts.

Fourth Separate and Affirmative Defense

The relief prayed for in the Complaint is erroneous and improper.

Fifth Separate and Affirmative Defense

Defendant states and alleges that under and pursuant to the powers and authorities granted it by Section 5g of the Reconstruction Finance Corporation Act as added by the Act of March 27, 1942, Ch. 198, Sec. 2, 56 Stat. 175, Tit. 15 U.S.C.A. Sec. 606b-2, the defendant, with the approval of the Secretary of Commerce, promulgated certain regulations, rules and rates, terms and conditions and general exceptions relating, among other things, to the properties and things for which war risk insurance coverage was offered and made available by it under said Act, which are known as "Regulations 'A'" and which it caused to become effective on July 1, 1942; that a copy of said "Regulations 'A'"

is attached hereto, marked "Defendant's Exhibit A" and incorporated herein and made a part hereof as fully as though set forth herein in full; that by virtue of the provisions of its "Regulations 'A'" issued as aforesaid, the only watercraft for which it has at any time offered war risk insurance protection are:

- (a) Vessels used exclusively for storage, housing, manufacturing or generating power;
- (b) Pleasure craft (including vessels utilized for pleasure fishing, but excluding those employed in commercial fishing), but only while laid up afloat or ashore;
- (c) All vessels or craft while under construction until delivery by the builder or sailing on delivery or trial trip, whichever shall first occur;

that pursuant to the provisions of Section 5g of the Reconstruction Finance Corporation Act, as amended, the defendant, immediately upon entering upon its statutory functions under subsection (b) of the [11] said Section 5g, adopted an administrative procedure under which the exclusions provided in said "Regulations A" as aforesaid were made applicable to all claims arising under subsection (b); that under and pursuant to the provisions of its "Regulations A" and in accordance with its established administrative practice defendant did exclude and except the loss referred to in the Complaint from the war risk insurance protection offered by it.

Sixth Separate and Affirmative Defense

Defendant states and alleges that under and pursuant to Section 5g of the Reconstruction Finance Corporation Act, as added by the act of March 27, 1942, Ch. 198, Sec. 2, 56 Stat. 175, Title 15 U.S.C.A. Sec. 606b-2, it (War Damage Corporation) is authorized to make general exceptions to the protection authorized by said Section 5g; that pursuant to said authorization, on October 2, 1944, defendant duly adopted and approved a resolution excepting and excluding from any and all protection under said Act, among other things; all vessels and water-craft wherever situated, other than (a) vessels used exclusively for storage, housing, manufacturing, or generating power; (b) vessels while under construction, until delivery by the builder or sailing on delivery or trial trip, whichever shall first occur; and (c) pleasure water-craft while laid up, afloat or ashore, within certain limits indicated in the resolution; that a copy of said resolution is hereto attached marked "Defendant's Exhibit B" and incorporated herein and made a part hereof as fully as though set forth herein in full; that the exclusions specified in said resolution of October 2, 1944, are in accordance with and pursuant to the administrative procedure theretofore adopted by and consistently followed by defendant corporation throughout its corporate existence; that the aforesaid resolution was approved by the Secretary of Commerce as required by said Section 5g of the Reconstruction Finance Corporation Act; [12] that the SS Lahaina is of a class of property excepted and

excluded by said resolution from protection under said Section 5g, and that accordingly plaintiff is not entitled to recover herein.

Seventh Separate and Affirmative Defense

Defendant states and alleges that under and pursuant to the powers and authorities granted it by Section 5g of the Reconstruction Finance Corporation Act, as added by the Act of March 27, 1942, Ch. 198, Sec. 2, 56 Stat. 175, Tit. 15 U.S.C.A. Sec. 606b-2, War Damage Corporation was not authorized to provide war risk insurance on property upon which the United States Maritime Commission is authorized to provide marine war risk insurance; that the United States Maritime Commission, at all times herein mentioned and at all times mentioned in plaintiff's complaint was and now is authorized under the provisions of the Merchant Marine Act, 1936, June 29, 1936, Ch. 858, Title II, as amended June 29, 1940, Ch. 447, 54 Stat. 690, Tit. 46 U.S.C.A. Sec. 1128a, and as amended April 11, 1942, Ch. 240, 56 Stat. 214, Tit. 46 U.S.C.A. Sec. 1128a, to insure against loss or damage by the risk of war, American vessels; that at no time has War Damage Corporation offered to insure or insured against loss of or damage to property, real and personal, which may result from enemy attack, where such protection was authorized to be insured against the risks of war by the United States Maritime Commission; that plaintiff's vessel SS Lahaina was, at the time of loss, of American registry.

Eighth Separate and Affirmative Defense

That pursuant to Section 5g of the Reconstruction Finance Corporation Act as added by the act of March 27, 1942, Ch. 198, Sec. 2, 56 Stat. 175, Title 15 U.S.C.A., Sec. 606b-2, and the authorized and established administrative practice of defendant, all losses [13] sustained subsequent to December 6, 1941, and a date determined by the Secretary of Commerce, to wit, July 1, 1942, for which the defendant was and is authorized to give any protection, were and are adjusted as if defendant's policy of insurance (W.D.C. Form No. 1) were in fact in force at the time of such loss and were in fact issued for such loss; that the right of action, if any, set forth in the complaint is barred because this cause of action was not commenced within twelve months after the date of loss, as required by defendant's policy, W.D.C. Form No. 1, a specimen copy of which is attached hereto, marked "Defendant's Exhibit C" and incorporated herein and made a part hereof as fully as though set forth in full herein.

Ninth Separate and Affirmative Defense

That pursuant to the Reconstruction Finance Corporation Act as added by the act of March 27, 1942, Ch. 198, Sec. 2, 56 Stat. 175, Title 15 U.S.C.A. Sec. 606b-2 and the authorized and established Administrative practice of defendant, all losses sustained subsequent to December 6, 1941, and a date determined by the Secretary of Commerce, to wit, July 1,

1942, for which the defendant was and is authorized to give any protection, were and are adjusted as if defendant's policy of insurance (W.D.C. Form No. 1) were in fact in force at the time of such loss and were in fact issued for such loss; that the right of recovery, if any, alleged in the Complaint is barred because plaintiff did not comply with the "Requirements in Case of Loss" set forth on page 2 of the said policy, (a specimen copy of which is attached hereto, marked "Defendant's Exhibit C" and incorporated herein) in that plaintiff did not give immediate written notice of said loss to defendant and did not file with the defendant within sixty days after the loss a proof of loss as required by said policy and did not at any time file a proof of [14] loss which complied with the terms of said policy; that defendant at no time extended plaintiff's time for filing said proof of loss.

Tenth Separate and Affirmative Defense

That on December 30, 1942, the Secretary of Commerce of the United States, acting for and on behalf of defendant, War Damage Corporation, duly issued a public announcement that stated, among other things, that all claims for loss or damage to property, in transit between points in the United States and its territories and possessions, which resulted directly from enemy attack between December 6, 1941, and July 1, 1942, must be filed with the Washington office of the War Damage Corporation on or before February 1, 1943; that a copy of said public announcement is attached hereto marked

“Defendant’s Exhibit D” and is incorporated herein and made a part hereof as fully as though set forth in full herein that the right of recovery, if any, alleged in the Complaint is barred because plaintiff did not file claim with the defendant by February 1, 1943, as required by the said public announcement.

Wherefore, defendant prays that the Complaint herein be dismissed with costs to the defendant and for such other and further relief as may be proper.

ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON &
CHARLES,
Attorneys for Defendant.

State of California,
City and County of San Francisco—ss.

Edward D. Ransom, being first duly sworn, deposes and says:

That he is associated with the firm of Lillick, Geary, Olson & Charles, attorneys for Defendant, War Damage Corporation, a corporation; that the office of said attorneys is within the City and County of San Francisco; that affiant is authorized to and does make this varification on behalf of the defendant, War Damage Corporation, for the reason that there are no officers of said corporation within the district of this honorable court; that he has read the within Answer and knows the contents thereof and that the same is true of his own knowledge

except as to those matters alleged upon information and belief and as to those matters he believes them to be true.

EDWARD D. RANSOM.

Subscribed and sworn to before me this 12th day of November, 1946.

[Seal] EMMA L. MacHUGH,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Jan. 15, 1948.

Receipt of a copy of the within Answer is admitted this 12th day of Nov., 1946.

HALL, HENRY & OLIVER,
Attorneys for..... [16]

WAR DAMAGE CORPORATION

WASHINGTON, D. C.

REGULATIONS

RULES AND RATES

All quotations for insurance under policies to be issued by War Damage Corporation shall be made subject to the Regulations herein set forth and all policies of insurance shall be issued in accordance therewith. Such Regulations are subject to change or amendment upon publication by War Damage Corporation. Notice of such change or amendment will be given to Fiduciary Agents.



W.D.C. — REGULATIONS "A" — EFFECTIVE JULY 1, 1942

TABLE OF CONTENTS

	PAGE
Foreword	1
Explanation of Terms	1
Issuance of Policies	1
Only One Policy Permissible	1
Application for Coverage	2
Effective Date and Term of Insurance	2
Policy Form and Coverage	2
Cancellation	2
Net Premium	3
Reduction of or Addition to Policy Amount	3
Blanket Insurance	3
Owners of Mortgage or Financial Interests	3
Loss Payable Clause	3
Loss Adjustments	3
Service Fee to Producer	3
Minimum Premium	4
Other Insurance	4
Reporting Forms Prohibited	4
Limits of Coverage for Vessel Properties and Cargoes Stored on Vessels	4
Policy Exclusions	4
Rates	4
Construction Codes	5
Occupancy Codes	5
Coinsurance Clause	5
Coverage for Commercial Jewelry, Furs, Art Objects, and the like	5
Coverage for Privately Owned Jewelry, Furs, Art Objects, and the like	6
Coverage for Pleasure Water Craft and Pleasure Aircraft	6
Coverage for Growing Crops and Orchards	6
Form of Endorsement for Excluded Property	6
Explanation of Pro Rata Distribution Clause	7
Explanation of Coinsurance Clause	7
Appendix A	8
Specimen Policy	13

Additional copies of these Regulations or application forms will be available from established Regional Rating Organizations or Bureaus.

FOREWORD

WAR DAMAGE CORPORATION—War Damage Corporation is a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, herein called the "Corporation." Pursuant to Section 5g of the Reconstruction Finance Corporation Act, as amended, the Corporation is authorized to provide reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack). The Corporation is prepared to offer such protection in accordance with the Regulations set forth herein, as may be amended from time to time by the Corporation. These Regulations contain appropriate instructions to Producers and Fiduciary Agents regarding the issuance of policies of insurance by the Corporation. Inquiries of Producers concerning these Regulations or any other matters relating to the Corporation's program should be directed to a Fiduciary Agent.

TERRITORY—For the present, insurance will be written on properties situated in the Continental United States of America, Alaska, Virgin Islands, Hawaii, Porto Rico and the Canal Zone.

EXPLANATION OF TERMS USED HEREIN

APPLICANT—The term "Applicant" shall mean any person, public or private, including any individual, partnership, corporation, association, State, County, Municipality, or other political subdivision, having an insurable interest in property eligible for coverage by policies of insurance issued by the Corporation pursuant to these Regulations and making application to the Corporation for such coverage in the forms of Application prescribed by the Corporation.

INSURED—The term "Insured" shall mean any Applicant to whom a policy of insurance is issued by the Corporation in accordance with these Regulations.

PRODUCER—The term "Producer" shall mean (a) any authorized insurance broker or (b) any agent of a fire insurance carrier which has been appointed by the Corporation as its Fiduciary Agent, provided that such insurance broker or agent is duly licensed in accordance with the legal requirements of the State, Territory or District in which he acts as a Producer. A direct writing Mutual Company or Reciprocal Exchange appointed by the Corporation as its Fiduciary Agent may also act as a Producer and may also designate another direct writing Mutual Company or Reciprocal Exchange as a Producer, provided any such Producer so designated shall be licensed as an insurer in the jurisdiction where it acts as a Producer.

FIDUCIARY AGENT—The term "Fiduciary Agent" shall mean any insurance carrier (Capital Stock Insurance Company, Mutual Insurance Company or Reciprocal Exchange) which has been specifically appointed by the Corporation to act as its Fiduciary Agent under a "Fiduciary Agent Agreement." Each Fiduciary Agent so appointed is empowered to receive Applications and remitances covering premiums, to issue Policies, and otherwise to transact such business of the Corporation in accordance with these Regulations.

RULES

ISSUANCE OF POLICIES

RULE 1—Policies may be issued only through a Fiduciary Agent.

ONLY ONE POLICY PERMISSIBLE

RULE 2—Only one Policy shall be permitted to the Insured on any one property (or group of properties, if written blanket) and only one Policy shall be permitted to the Insured for any of the following types of coverage:

1. Properties at fixed locations, and vehicles when specified (including pleasure aircraft or water craft while laid up ashore or afloat). (See Application WDC Form No. 2.)
2. Property in transit. (See Application WDC Form No. 3.)
3. Builders' risk on hulls. (See Application WDC Form No. 4.)
4. Cargo stored afloat. (See Application WDC Form No. 5.)
5. Hulls. (See Application WDC Form No. 6.)
6. Growing crops and/or orchards. (See Application WDC Form No. 7.)

APPLICATION FOR COVERAGE

RULE 3—The Applicant shall apply for insurance through any Producer, the appropriate Application forms prescribed by the Corporation. Three copies of the Application and, in any proper case, six copies of the Schedule (WDC Form No. 11) shall be signed by the Applicant. The forms of Application and Schedule shall be supplied in sets, consisting of three numbered copies of the Application (numbered 1, 2 and 3) and three attached tickets (numbered 4, 5 and 6) which correspond to the upper part of the Application. The Producer shall complete the Application and ticket forms in one operation, complete and attach the copies of the Schedule (if any), and retain the No. 3 copy of the Application. No. 1 and No. 2 copies of the Application and all three copies of the ticket shall be mailed to the Fiduciary Agent.

"Construction" and "Occupancy" classification code numbers are specified in "Appendix A" (which is made a part of these Regulations) for each class of property or risk. The Producer shall insert in the spaces provided therefor in the Application and the Schedule (if any) the proper code numbers. The Producer shall also insert in the space provided therefor in the Application and the Schedule (if any) the appropriate coinsurance percentage as explained in the Application. *Applications transmitted by the Producer to the Fiduciary Agent shall be accompanied by cash, money order, or check in full payment of the required premium. Money orders and checks shall be drawn to the order of the Fiduciary Agent to which the Application is transmitted.* The Application and the Schedule (if any), a copy of which shall be attached to and form a part of the Policy, will contain the only description of the property insured, and the Producer shall make certain that the Application contains all descriptive information required thereby.

EFFECTIVE DATE AND TERM OF INSURANCE

RULE 4—*The Producer's acceptance of the Application does not constitute a binder.* The insurance applied for shall take effect on the "Effective Date," which shall be noon standard time, at the place where the property is located, and shall terminate 12 months thereafter at the same hour. (For term of transit risk coverage, see Application WDC Form No. 3.) (For cancellation provisions, see Rule 6.) If the Application has been properly completed and is accompanied by full payment of premium, the "Effective Date" shall be the date on which the Application is received and date-stamped by the Fiduciary Agent (but in no event earlier than July 1, 1942), unless a later date is requested in the Application.

POLICY FORM AND COVERAGE

RULE 5—Insurance will be written only on the form of Policy prescribed by the Corporation. (See specimen form of Policy, WDC Form No. 1, appended to these Regulations.) The Policy will cover only direct physical loss of damage to the property insured. *The Policy does not provide consequential coverage, such as use and occupancy, rent and rental value, or coverage for other indirect losses.*

CANCELLATION

RULE 6—The Policy may be cancelled, upon the request of the Insured or the surrender of the Policy, only in case of change in ownership of the property or the Insured's interest therein. If the Policy is issued in violation of the Regulations, the Policy may be cancelled by the Corporation by delivering a

...ing to the Insured and to the loss payee (if any) at the address given in the Application, five days' written notice. In the event of cancellation, the pro rata Net Premium" shall be returned.

NET PREMIUM

RULE 7—The term "Net Premium" shall mean: the Gross Premium less (a) Producer's service fee (5%—subject to the minimum and maximum provided in Rule 13), and (b) the Fiduciary Agent's expense reimbursement (3½%—subject to the minimum and maximum allowable in accordance with the "Fiduciary Agent Agreement").

REDUCTION OF OR ADDITION TO POLICY AMOUNT

RULE 8—The Policy may, upon application, be reduced in amount in the event that the Insured disposes of or changes his interest in any of the property covered by the Policy and the return premium due the Insured shall be calculated on a pro rata "Net Premium" basis. The Policy may, upon application, and upon payment of the proper premium, be increased in amount, subsequent to the "Effective Date," to cover property in additional amounts or at additional locations. Reporting forms of policies will not be issued. No Producer's service fee or Fiduciary Agent's expense reimbursement shall be paid on additional premiums. No payment shall be required by or made by the Corporation where the additional or return premium is less than fifty (50) cents. (For application forms covering reductions or additions, see WDC Form Nos. 8 and 9.)

BLANKET INSURANCE

RULE 9—Where more than one property is under the same ownership whether at one or more locations, all such properties may be insured under one Policy for an amount of insurance covering blanket on all such properties, provided the Application (and the Schedule, if any) shall set forth the approximate distribution of the total coverage on all such properties according to the respective States, Territories, possessions, and coded cities of location. The rate for blanket insurance shall be the rate for the highest rated building or location. The "Pro Rata Distribution" clause in the Policy applies with respect to blanket insurance written subject to less than 90% Coinsurance.

OWNERS OF MORTGAGE OR FINANCIAL INTERESTS

RULE 10—Policies may be issued to mortgagees or other holders of security or financial interests in property eligible for coverage under these Regulations. The rate shall be determined according to these Regulations on the basis of the coded classification of the property and risks covered and the coverage shall be subject to all the conditions of the Policy. If blanket policies are issued covering mortgagee or other financial interests, the provisions of these Regulations relating to "Blanket Insurance" shall apply. (See Rule 9.)

LOSS PAYABLE CLAUSE

RULE 11—The Application forms include a loss payable provision, and in any case where the Applicant desires that payment under the Policy be made to any party in interest in addition to the Insured, the loss payable provision must be completed properly. No "mortgagee clause" will be attached to the Policy.

LOSS ADJUSTMENTS

RULE 12—In the event of loss, the Insured shall give immediate written notice to the Fiduciary Agent through which the Policy was issued, and the Insured shall comply with the provisions of the Policy relating to "Requirements in Case of Loss." Adjustment and settlement of the loss will be effected in accordance with the Corporation's established procedure.

SERVICE FEE TO PRODUCER

RULE 13—The service fee to the Producer shall not exceed 5% of the premium, with a minimum fee of \$1.00 per Policy, and a maximum fee of

\$1,000 per Policy. *The service fee shall not be deducted from the remittance which accompanies the Application.* The service fee may be paid on each Policy issued, and shall become due upon the issuance of the Policy and shall be payable on or before the 20th day of the month following. Service fees shall be paid on renewals. Service fees may be paid only to Producers. (For provisions relating to service fees in connection with additional or return premiums, see Rule No. 8.)

MINIMUM PREMIUM

RULE 14—The minimum premium shall be \$3.00 per Policy.

OTHER INSURANCE

RULE 15—The "Other Insurance" clause of the Policy provides that if there is any other insurance covering the property, whether prior to, subsequent to or simultaneous with the insurance under the Policy, which in the absence of the insurance under the Policy would cover the loss or damage covered by the Policy, then the insurance under the Policy becomes "excess insurance" and does not apply except over and above such other insurance.

REPORTING FORMS PROHIBITED

RULE 16—Reporting forms of policies will not be issued.

LIMITS OF COVERAGE FOR VESSEL PROPERTIES AND CARGOES STORED ON VESSELS

RULE 17—Insurance provided by the Corporation covers the vessels or cargo hereinafter described while confined to the limits of the harbors and other inland waters of the United States, as defined in Section 2 of the Act of Congress of February 19, 1895, and set forth in the Pilot Rules for Certain Inland Waters as issued by the Department of Commerce, or while confined to the Great Lakes (including the waterways connecting them, and their harbors and tributaries in the United States), or while confined to harbors and inland waters of the Canal Zone, Puerto Rico, Virgin Islands and Territories of Hawaii and Alaska:

- (a) Vessels used exclusively for storage, housing, manufacturing or generating power.
- (b) Pleasure craft (including vessels utilized for pleasure fishing, but excluding those employed in commercial fishing), but only while laid up afloat or ashore.
- (c) All vessels or craft while under construction until delivery by the builder or sailing on delivery or trial trip, whichever shall first occur.
- (d) Cargoes on vessels described in (a) above.

POLICY EXCLUSIONS

RULE 18—Unless otherwise specifically provided in writing thereon in accordance with these Regulations, the Policy shall not cover accounts, bills, currency, deeds, evidences of debt, securities, money, bullion, stamps, furs, jewelry, precious and semi-precious stones, works of art, statuary, paintings, pictures, etchings, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, objects of historical or scientific interest, pleasure water craft, pleasure aircraft, standing timber, growing crops, orchards, or any real property which is not a part of a structure or building. Provisions for coverage by separate Application or endorsement with respect to some of the foregoing excluded types of property are set forth in Rule 23, Rule 24, Rule 25, Rule 26 and Rule 27. These Regulations make no provision for insurance with respect to other excluded types of property.

RATES

RULE 19—The rates for coverage under the Policy shall be determined according to the construction classification, occupancy classification, and coinsurance

23
requirements, all as set forth in "Appendix A" which is made a part of these Regulations. The Producer shall determine the proper rate for the coverage applied for under the Application and shall insert such rate in the appropriate space provided on the Application and the Schedule (if any). (For provisions relating to: "Construction Codes," see Rule 20; "Occupancy Codes," see Rule 21; "Coinsurance Requirements," see Rule 22.)

CONSTRUCTION CODES

RULE 20—The Producer shall insert in the proper space on the Application and the Schedule (if any) the appropriate construction classification code number, in accordance with the construction classification code numbers set forth in "Appendix A" which is made a part of these Regulations. In the case of a risk composed of different classes of construction, if not less than 75% of the total area (including basements) is of one class of construction, the risk may be coded according to such predominating class of construction. Otherwise, such risk must take the class rate of the higher rated class of construction. The term "risk" shall mean a single building, or a group of buildings, and contents located at one location.

OCCUPANCY CODES

RULE 21—The Producer shall insert in the proper space in the Application and the Schedule (if any) the appropriate occupancy classification code number in accordance with the occupancy classification code numbers set forth in "Appendix A" which is made a part of these Regulations.

INSURANCE CLAUSE

RULE 22—The "Coinsurance" clause contained in the Policy does not apply to dwellings or farm properties, nor to the types of property described in Rule 23, Rule 24, Rule 25 and Rule 26.

COVERAGE FOR COMMERCIAL FURS, JEWELRY, ART OBJECTS, AND THE LIKE

RULE 23—Furs and jewelry of commercial dealers, and works of art, statuary, paintings, pictures, etchings, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, and objects of historical or scientific interest, when owned by commercial dealers, mutual institutions, or, when open for public display, by private persons, may be specifically covered, provided the Application or the Schedule attached thereto sets forth separately the description, location and the amount of coverage of the property to be so covered. The limit of coverage shall be \$5,000 for any one article and the limits of coverage for any one interest at any one location shall be as follows:

Works of art, statuary, paintings, etchings, pictures, and antiques	\$100,000
Jewelry	\$100,000
Furs	\$100,000
Stamp and Coin Collections, manuscripts, and books and printed publications more than 50 years old.....	\$100,000
Models, curiosities, and objects of historical or scientific interest.....	\$100,000

In any such case the Fiduciary Agent shall attach to the Policy a separate endorsement (or endorsements) extending the coverage of the Policy to include each type of such property so listed in the Application and/or the Schedule, subject to the foregoing limits of coverage. Such endorsement shall also state that the "Coinsurance" clause and "Pro Rata Distribution" clause, both of which are a part of the Policy, shall not be applicable to the property covered under the endorsement. Such endorsement shall be in the form set forth in Rule 27.

COVERAGE FOR PRIVATELY OWNED FURS, JEWELRY, ART OBJECTS AND THE LIKE

RULE 24—Furs, jewelry, works of art, statuary, paintings, pictures, etchings, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, and objects of historical and scientific interest, when privately owned, may be specifically covered, provided the Application or the Schedule attached thereto sets forth separately the description, location and the amount of coverage of the property to be so covered. The limits of coverage shall be \$5,000 for any one article and a total of \$10,000 for any interest with respect to any and all of the foregoing types of property. In such case the Fiduciary Agent shall attach to the Policy a separate endorsement (or endorsements) extending the coverage of the Policy to include each type of such property so listed in the Application and/or the Schedule, subject to the foregoing limits of coverage. Such endorsement shall also state that the "Coinsurance" clause and "Pro Rata Distribution" clause, both of which are a part of the Policy, shall not be applicable to the property covered under the endorsement. Such endorsement shall be in the form set forth in Rule 27.

COVERAGE FOR PLEASURE WATER CRAFT AND PLEASURE AIRCRAFT

RULE 25—Pleasure water craft and pleasure aircraft may be specifically covered while laid up ashore or afloat provided the Application or the Schedule attached thereto sets forth separately the description, location and the amount of coverage of the property to be so covered. The limit of coverage shall be \$10,000 for any one craft. In any such case the Fiduciary Agent shall attach to the Policy a separate endorsement (or endorsements) extending the coverage of the Policy to include each type of such property so listed in the Application, subject to the foregoing limit of coverage. Such endorsement shall also state that the "Coinsurance" clause and "Pro Rata Distribution" clause, both of which are a part of the Policy, shall not be applicable to the property covered under the endorsement. Such endorsement shall be in the form set forth in Rule 27.

COVERAGE FOR GROWING CROPS AND ORCHARDS

RULE 26—Growing crops and orchards may be specifically covered, provided the separate form of Application for insurance covering growing crops and orchards is completed by the Applicant. The limit of coverage shall be \$100,000 for any one interest.

FORM OF ENDORSEMENT FOR EXCLUDED PROPERTY

RULE 27—All endorsements attached to the Policy for coverage pursuant to the provisions of Rule 23, Rule 24, or Rule 25, shall be in the following form:

"This policy is hereby extended to cover

(Insert description of property)

subject to a limit of loss not exceeding \$..... for any one article (craft). The "Coinsurance" clause and the "Pro Rata Distribution" clause contained in this policy are not applicable to the property covered by this endorsement. All other terms and conditions of this policy remain unchanged.

".....
(Authorized Fiduciary Agent)

"By....."

The dollar amount which shall be inserted in the blank space of the foregoing form of endorsement shall be the amount of coverage applicable to the property described in such endorsement, or the limit of coverage specified in Rule 23, Rule 24, or Rule 25, as the case may be, whichever is the lesser.

EXPLANATION OF PRO RATA DISTRIBUTION CLAUSE

RULE 28—The effect of the "Pro Rata Distribution" clause is to distribute proportionately the amount of insurance where more than one building, structure or place is covered under one blanket amount. This clause has the effect of apportioning the total amount of the insurance in the proportion that the value of each building, structure or place bears to the total value of all buildings, structures or places insured. The following is an illustration:

If there is \$100,000 worth of merchandise in two buildings, and blanket insurance is in force in the amount of \$50,000, and if the value is distributed between the two buildings as follows:

In building A—Value	\$ 75,000
In building B—Value.....	25,000
Total Value	<u>\$100,000</u>

The "Pro Rata Distribution" clause distributes the \$50,000 insurance as follows:

75/100 of \$50,000 in Building A.....	\$37,500
25/100 of \$50,000 in Building B.....	\$12,500

In other words, the effect of the "Pro Rata Distribution" clause is the same as if the property owner had carried insurance under two specific items, one for \$37,500 covering in building A, and one for \$12,500 covering in building B, instead of the one \$50,000 blanket amount.

EXPLANATION OF COINSURANCE CLAUSE

RULE 29—The effect of the "Coinsurance" clause is to assess equitably the cost of the insurance. The following is one illustration:

Value	\$10,000
Insurance required by (50%) Coinsurance Clause.....	5,000
Insurance actually carried	5,000
Loss	1,000

In this case, the property owner has carried sufficient insurance to comply with the 50% "Coinsurance" clause and, therefore, the loss of \$1,000 would be paid in full.

The following is another illustration:

Value	\$10,000
Insurance required by (50%) Coinsurance Clause.....	5,000
Insurance actually carried.....	2,500
Loss	1,000

In this case, since the property owner has carried only one-half of the required amount of insurance, he would collect but one-half of his loss. The property owner would then recover only 50% of his loss, or \$500.

In the case of a total loss under either illustration, the property owner would collect the face amount of the policy.

RATE SCHEDULE—See pages 2 to 5 inclusive.

CONSTRUCTION CODE

For the purpose of determining rates for coverage, risks shall be coded as to construction as follows:

Coverage on or in buildings or structures of fire resistive construction according to fire insurance standards..... Code 1

Coverage on or in buildings or structures of any other construction, and property in the open..... Code 2

In the case of a risk composed of different classes of construction, if not less than 75% of the total floor area (including basements) is of one class of construction, the risk may be coded according to such predominating class of construction. Otherwise, such risk must take the class rate of the higher rated class of construction. (See Rule 20.)

(The term "risk" as used herein may be construed to mean a single building, or a group of buildings, and contents situated at one location.)

COINSURANCE CREDITS

Rates are based upon the use of the 50% Coinsurance clause, which is the minimum permissible, except as otherwise specifically provided herein:

For 80% Coinsurance clause, deduct 30% from the base rate.

For 90% Coinsurance clause, deduct 35% from the base rate.

For 100% Coinsurance clause, deduct 40% from the base rate.

SPRINKLER CREDIT

If not less than 75% of the total floor area (including basements) of the risk is equipped with a system of automatic sprinklers, deduct 10% from the base rate.

BLANKET POLICIES

Blanket policies take the rate of the highest rated building or location. (See Rule 9.)

Rate Schedule

RATES ARE FOR BUILDING AND CONTENTS UNLESS OTHERWISE NOTED

MINIMUM PREMIUM OF \$3.00 PER POLICY

	Occupancy Code Number	Construction Code Number	ANNUAL RATES PER \$100 OF INSURANCE				
				No Coinsurance	With Coinsurance of		
					50%	80%	90%
NS—without automatic sprinklers S—with automatic sprinklers							100%
Dwellings and their contents..... (Dwellings comprising less than five family units including private garages, out-buildings and private passenger automobiles.) (Use Application WDC Form No. 2.)	01	1 or 2	.10		Coinsurance does not apply		
Farm properties and their contents..... (Farm property and their contents shall include private garages, private barns and out-buildings, farm implements, live stock, and motor vehicles used for farm or pleasure purposes.) (Use Application WDC Form No. 2.)	02	1 or 2	.10		Coinsurance does not apply		
Churches, hospitals, educational or cultural institutions, libraries, museums, public buildings (Use Application WDC Form No. 2.)	NS 03 S 03 NS 03 S 03	1 1 2 2	— — — —	.10 .09 .15 .135	.07 .063 .105 .095	.065 .059 .098 .088	.06 .054 .09 .081
Apartments, hotels, offices, mercantiles, warehouses and other buildings not used for manufacturing (Use Application WDC Form No. 2.)	NS 04 S 04 NS 04 S 04	1 1 2 2	— — — —	.15 .135 .20 .18	.105 .095 .14 .126	.098 .088 .13 .117	.09 .081 .12 .108
Manufacturing plants, piers, wharves, bridges, and structures not otherwise specifically provided for (Use Application WDC Form No. 2.)	NS 05 S 05 NS 05 S 05	1 1 2 2	— — — —	.20 .18 .30 .27	.14 .126 .21 .189	.13 .117 .195 .176	.12 .108 .18 .162

Rate Schedule—(Continued)

RATES ARE FOR BUILDING AND CONTENTS
UNLESS OTHERWISE NOTED

MINIMUM PREMIUM OF \$3.00
PER POLICY

	Occupancy Code Number	Construction Code Number	ANNUAL RATES PER \$100 OF INSURANCE			
			No Coinsurance	With Coinsurance of		
				50%	80%	90%
NS—without automatic sprinklers S—with automatic sprinklers						100%
Street railway and railroad properties (except trackage and road- beds and rolling stock and their contents.) (Use Application WDC Form No. 2.)	NS 06 S 06	1 or 2 1 or 2	— —	.30 .27	.21 .189	.195 .176
Rolling stock (Use Application WDC Form No. 2.)	07	—	—	.25	.175	.163
Trackage and road beds (Use Application WDC Form No. 2.) . . .	08	—	—	.10	.07	.065
Builders' risk shall take the rate applicable to the completed building or structure (Use Application WDC Form No. 2.)						
Floater (Floater policies shall cover movable property, at any location, but shall not cover while in transit.) (Use Applica- tion WDC Form No. 2.)	09	—	100% Coinsurance Mandatory			.25
Motor vehicles, except those hereinabove provided for under Dwellings and Farm Properties (Use Application WDC Form No. 2.)	10	—	—	.25	.175	.163
Growing crops and orchards (Use Application WDC Form No. 7.)	11	—	—			.15

Transit Risks (Use Application WDC Form No. 3.) Insurance to be applied for on the basis of: (a) the highest of items (a), (b), and (c) of the Application in the case of a 12 months' policy; or (b) item (d) of the Application in the case of a 3 months' policy issued to an applicant who has been in business for less than 3 months; or (c) item (e) of the Application in the case of a trip risk.	12	—	.00	Coinsurance does not apply
Vessels: Commercial hulls—All metal (including hull, deck and superstructure) Others..... (Use Application WDC Form No. 6.)	13	1	.50	Coinsurance does not apply
Builders' risk—All Metal (including hull, deck and superstructure) Others..... (Use Application WDC Form No. 4.) (Premiums calculated on completed price.)	13	2	.75	Coinsurance does not apply
Cargo Stored Afloat: All Metal (including hull, deck, and superstructure) Others (Use Application WDC Form No. 5.).....	13	1	.25	Coinsurance does not apply
	13	2	.375	Coinsurance does not apply
Publicly or privately owned utilities, such as light, water, heat, power and communication systems, including transmission lines, underground piping, wiring and conduits. (Use Application WDC Form No. 2.)	14	1 or 2	—	.30 .21 .195 .18
Furs, jewelry, art objects, and the like. (Use Application WDC Form No. 2.)	15	1 or 2	.75	Coinsurance does not apply
Pleasure aircraft or pleasure water craft. (Use Application WDC Form No. 2.)	16	1 or 2	—	.25 .175 .163 .15

Coded City, State, Territory and Possessions Codes

ALABAMA	01 Birmingham	NEVADA	47
	02 Remainder of state	NEW HAMPSHIRE	48
ALASKA	03	NEW JERSEY	49 Jersey City
ARIZONA	04		50 Newark
ARKANSAS	05		51 Remainder of state
CALIFORNIA	06 Los Angeles	NEW MEXICO	52
	07 Oakland	NEW YORK	53 Buffalo
	08 San Francisco		54 New York City
	09 Remainder of state		55 Rochester
COLORADO	10 Denver		56 Remainder of state
	11 Remainder of state	NORTH CAROLINA	57
CONNECTICUT	12	NORTH DAKOTA	58
DELAWARE	13	OHIO	59 Cincinnati
DISTRICT OF			60 Cleveland
COLUMBIA	14		61 Columbus
FLORIDA	16		62 Toledo
GEORGIA	17 Atlanta		63 Remainder of state
	18 Remainder of state	OKLAHOMA	64
HAWAIIAN ISLANDS	19	OREGON	65 Portland
IDAHO	20		66 Remainder of state
ILLINOIS	21 Chicago	PANAMA CANAL	
	22 Remainder of state	ZONE	67
INDIANA	23 Indianapolis	PENNSYLVANIA	68 Philadelphia
	24 Remainder of state		69 Pittsburgh
IOWA	25		70 Remainder of state
KANSAS	26	PUERTO RICO	71
KENTUCKY	27 Louisville	RHODE ISLAND	72 Providence
	28 Remainder of state		73 Remainder of state
LOUISIANA	29 New Orleans	SOUTH CAROLINA	74
	30 Remainder of state	SOUTH DAKOTA	75
MAINE	31	TENNESSEE	76 Memphis
MARYLAND	32 Baltimore		77 Remainder of state
	33 Remainder of state	TEXAS	78 Dallas
MASSACHUSETTS	34 Boston		79 Houston
	35 Remainder of state		80 San Antonio
MICHIGAN	36 Detroit		81 Remainder of state
	37 Remainder of state	UTAH	82
MINNESOTA	38 Minneapolis	VERMONT	83
	39 St. Paul	VIRGINIA	84
	40 Remainder of state	VIRGIN ISLANDS	85
MISSISSIPPI	41	WASHINGTON	86 Seattle
MISSOURI	42 Kansas City		87 Remainder of state
	43 St. Louis	WEST VIRGINIA	88
	44 Remainder of state	WISCONSIN	89 Milwaukee
MONTANA	45		90 Remainder of state
NEBRASKA	46	WYOMING	91
BLANKET	99 (Allocate by cities and States)	FLOATERS	15

No.

War Damage Corporation

(A corporation created by Reconstruction Finance Corporation pursuant to Section 53 of the Reconstruction Finance Corporation Act, as amended, herein called the "Corporation")

WASHINGTON, D. C.

1 ISSUED TO:
(herein called the "Insured")

2 Mail address:

3 Effective date:

4. **In Consideration** of the payment of the premium, the Corporation agrees to indemnify the Insured, and
5 legal representatives, against direct physical loss of or damage to the property described in the attached application
6 which may result from **ENEMY ATTACK INCLUDING ANY ACTION TAKEN BY THE MILITARY, NAVAL**
7 **OR AIR FORCES OF THE UNITED STATES IN RESISTING ENEMY ATTACK.**

8 This insurance shall take effect on the effective date herein stated, at noon, standard time, at the place
9 where the property is located, and shall terminate twelve months thereafter, at the same hour.

10 The representations, terms and conditions of the application attached hereto shall be a part of this policy, and,
11 except as otherwise herein provided, this policy shall cover the property described in the application, for the amounts
12 therein stated, while located at the place(s) stated in the application, but not elsewhere.

13 Assignment of this policy shall not be valid except with the written consent of the Corporation.

14 The provisions printed on the following pages are made a part of this policy, and this policy shall also be
15 subject to such other provisions, stipulations and agreements as may be added hereto, over the signature of a duly
16 authorized Fiduciary Agent.

17 **In Witness Whereof**, the Corporation has executed this policy, but this policy shall not be valid unless
18 countersigned by a duly authorized Fiduciary Agent of the Corporation.

19
Attest:
A. L. Brown
Secretary

WAR DAMAGE CORPORATION

M. Clayton
President

20 Countersigned this day of, 19.....

21
(Authorized Fiduciary Agent)

22 By.....

23 AMOUNT OF LOSS

24 The amount of loss shall not exceed the actual cash value of the property, nor the interest of the Insured therein at the time of loss, nor the amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss. No allowance shall be made for compensation for loss of use, loss of profits, loss resulting from delay or deterioration, loss or impairment of market, cessation of work, fixation of price or value, interruption of business or manufacture or occupancy, or for consequential loss. No allowance shall be made for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction, use or repair.

38 CONCEALMENT OR FRAUD

39 This policy shall be void if, whether before or after a loss, the Insured has wilfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

46 PROPERTY EXCLUDED

47 Unless specifically provided in writing hereon, this policy shall not cover accounts, bills, currency, deeds, evidences of debt, securities, money, bullion, stamps, furs, jewelry, precious and semi-precious stones, works of art, statuary, paintings, pictures, etchings, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, objects of historical or scientific interest, pleasure water craft, pleasure aircraft, standing timber, growing crops, orchards, or any real property which is not a part of a structure or building.

58 PREMIUM

59 The premium required by the regulations of the Corporation shall be paid in full prior to the effective date. If a check is tendered in payment of premium and such check is not honored upon presentation for the full amount thereof, this policy shall be void.

64 PERILS NOT COVERED

65 The Corporation shall not be liable for loss caused directly or indirectly by:
66 (a) blackout; burglary; robbery; theft; larceny; pillage or looting; sabotage; vandalism; or malicious mischief; or
69 (b) neglect of the Insured to use all reasonable means to save and preserve the property after damage resulting from the perils herein covered.

72 PRO RATA

73 If any item of insurance covers a building, structure or place, the amount of insurance under such item shall attach in or on each building, structure or place in that proportion which the value of the property in or on each said building, structure or place shall bear to the value of all of the property covered by such blanket item.

80 This pro rata distribution clause shall not apply if this policy is subject to 90% or 100% coinsurance.

82 COINSURANCE

83 The Corporation shall not be liable for a greater proportion of any loss than the amount of insurance under this policy bears to the stipulated percentage of the actual cash value of the property described in the application at the time when such loss occurs. The stipulated percentage shall be

88 the percentage of coinsurance stated in the application. If the claim for loss is both less than \$10,000 and less than 2% of the total amount of insurance upon the property described in the application, at the time such loss occurs, no special inventory or appraisal of the undamaged property shall be required, and if the property described in the application consists of two or more items, the provisions of this paragraph shall apply to each item separately.

96 The provisions of this coinsurance clause shall not apply to dwellings comprising less than five family units, nor to farm properties.

99 **OTHER INSURANCE** If there is any other insurance covering the property insured hereunder, whether prior to, subsequent to, or simultaneous with this insurance, which in the absence of this insurance would cover the loss or damage hereby covered, then the Corporation shall not be liable hereunder for more than the excess over and above such other insurance.

106 MORTGAGE OR OTHER INTERESTS

107 If the application provides that loss hereunder shall be payable in whole or in part to a payee other than the Insured, and the Insured fails to render proof of loss within the time required by this policy, such payee shall, upon notice, as if named as the Insured herein, render proof of loss as herein specified within sixty days thereafter, and shall be subject to the provisions hereof as to examination under oath, appraisal, time of payment, and bringing suit.

115 CANCELLATION

116 This policy may be cancelled upon the request of the Insured and the surrender of this policy, only in case of change in ownership of the property, or in the Insured's interest therein. If this policy be issued in violation of the regulations of the Corporation in effect at the time of issuance, this policy may be cancelled by the Corporation by delivering or mailing five days' written notice to the Insured, and to the loss payee, if any, at the address given in the application. In the event of cancellation, the net premium shall be prorated and returned in conformity with the regulations of the Corporation.

127 REQUIREMENTS IN CASE OF LOSS

128 In the event of loss, the Insured shall give immediate written notice to the Corporation, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity, cost and actual cash value of each article and the amount claimed thereon, and file with the Corporation a proof of loss within 60 days after the loss, unless such time is extended by the Corporation in writing. Such proof of loss, signed and sworn to by the Insured, shall state the Insured's knowledge and belief as to the time and origin of the loss, the interest of the Insured and all others in the property, the actual cash value of each item thereof and the amount of loss thereto, and all contracts of insurance covering any of such property. If required, the Insured shall furnish verified plans and specifications of any buildings, fixtures or machinery destroyed or damaged; as often as may be required, exhibit to any person designated by the Corporation all that remains of any property herein covered; submit to examinations under oath by any person named by the Corporation and subscribe the same; and, as often as may be required, produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof, if originals be lost, at such reasonable time and place as may be designated by the Corporation, and permit extracts and copies thereof to be made.

(Continued on Page 4)

ATTACH APPLICATION AND ENDORSEMENT HERE

Page 4

153 APPRAISAL

154 In case the Insured and the Corporation fail to agree as to
 155 the actual cash value or the amount of loss, then, on
 156 the written demand of either, each shall select a competent
 157 and disinterested appraiser and notify the other of the ap-
 158 praiser selected within twenty days after such demand. The
 159 appraisers shall first select a competent and disinterested
 160 umpire, and, in the event of their failure within fifteen days
 161 to agree upon such umpire, then, on request of the Insured
 162 or the Corporation, such umpire shall be selected by a Judge
 163 of a Federal Court of the district in which the property is
 164 located. The appraisers shall then appraise the loss, stating
 165 separately actual cash value and loss to each item; and,
 166 failing to agree, shall submit their differences, only, to the
 167 umpire. An award in writing, so itemized, of any two when
 168 filed with the Corporation shall determine the amount of
 169 actual cash value and loss. Each appraiser shall be paid by
 170 the party selecting him and the expenses of appraisal and
 171 the umpire shall be paid by the parties equally.

172 CORPORATION'S

173 OPTIONS

174 It shall be optional with the Corporation to take all or any part of the property at the
 175 agreed value, and also to repair, rebuild, or replace the
 176 property destroyed or damaged with other of like kind and
 177 quality within a reasonable time on giving notice of its in-
 178 tentions so to do within thirty days after the receipt of the
 179 proof of loss; but there can be no abandonment to the Cor-
 180 poration of any property.

181 PAYMENT OF LOSS

182 Any loss shall be payable thirty days after proof of loss, as
 183 herein provided, is received by the Corporation and ascer-

184 tainment of the loss is made either by agreement between the
 185 Insured, mortgagee or loss payee, if any, and the Corpora-
 186 tion, expressed in writing, or by the filing with the Corpora-
 187 tion of an award as herein provided, and if the loss shall be
 188 payable to a payee other than the Insured, the amount of any
 189 loss shall be payable to such payee as interest may appear.

190 SUIT

191 No suit or action for recovery
 192 of any claim, shall be sustain-
 193 able in any court of law or equity unless all the require-
 194 ments of this policy shall have been complied with, or un-
 195 less commenced within six months after the date of loss.

195 SUBROGATION

196 The Corporation may require
 197 from the Insured an assignment
 198 of all right of recovery against any party for loss to the
 199 extent that payment therefor is made by the Corporation.

199 WAIVER

200 No permission affecting this in-
 201 surance shall exist, or waiver
 202 of any provision be valid, unless granted herein or expressed
 203 in writing added hereto. No provision, stipulation or for-
 204 feiture shall be held to be waived by any requirement or
 205 proceedings on the part of the Corporation relating to ap-
 206 praisal or to any examination provided for herein.

206 EXTENSION

207 If the Insured is unable to com-
 208 ply with any of the provisions
 209 of this policy applicable to a
 210 loss because of enemy action, occupation or control, the
 211 Insured's right of recovery shall not be prejudiced, provided
 212 the Insured shall comply with such provisions within a
 213 reasonable time after the Insured becomes able to do so,
 214 but in no event later than six months thereafter.

The Reconstruction Finance Corporation Act, as amended, provides:

SEC. 16. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the corporation, or for the purpose of obtaining money, property, or anything of value, under this Act, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

DEFENDANT'S EXHIBIT B

War Damage Corporation

RESOLUTION

Be It Resolved, That War Damage Corporation, deeming advisable the following general exceptions to the protection authorized under Section 5g of the Reconstruction Finance Corporation Act, as amended (Public Law No. 506, 77th Congress):

1. Does except from such protection (a) all accounts, bills, currency, deeds, evidences of debt, securities, money, bullion, stamps, precious and semi-precious stones, works of art, antiques, stamp and coin collections, manuscripts, models, curiosities, objects of historical and scientific interest, pleasure water-craft and pleasure aircraft, and standing timber, not specifically listed or designated as insured under a policy of insurance issued by this Corporation (b) all property interests of an "enemy" or an "ally of an enemy" as defined in the Trading with the Enemy Act, as amended, or of an alien enemy, wherever resident, or of any person or persons, real or juridical, whose names are contained in the Proclaimed List of Certain Blocked Nationals, as amended, unless legally protected under a policy of insurance issued by this Corporation; (c) all furs and jewelry not specifically listed or designated as insured under a policy issued by this Corporation, except furs and jewelry of any claimant or policyholder to an aggregate value not exceeding \$1,000.

2. Does except from any and all protection under said Act the following:

- (a) all intangible property (other than securities insured under a policy of insurance issued by this Corporation);
- (b) all real property (other than standing timber, growing crops and orchards) not a part of a building or structure.
- (c) all cargo on ocean-going, coastwise, inter-coastal, or overseas vessels, whether in the ports or inland or coastal waters of the United States, the Philippine Islands, the Canal Zone, or the Territories or possessions of the United States or otherwise (except cargo damaged or destroyed before July 1, 1942, by enemy attack while in transit between points located in any of the foregoing), and all goods and property which are or have been diverted to, detained at, or unloaded, landed, or stored within, the United States, the Philippine Islands, the Canal Zone, or the Territories or possessions of the United States while in transit by sea to or from a foreign port, so long as such goods shall be detained or prevented from proceeding to their ultimate destinations as designated in the applicable ocean bills of lading or shipping documents;
- (d) all vessels and water-craft wherever situated (and their tackle, apparel, fittings, equipment, stores, ordnance, boilers and machinery), other than (a) vessels used exclusively for storage, housing,, manufac-

turing or generating power, (b) vessels while under construction, until delivery by the builder or sailing on delivery or trial trip, whichever shall first occur, and (c) pleasure water-craft while laid up afloat or ashore, which are subject to protection within the limits indicated in paragraphs "1" and "E" of this resolution;

- (e) all loss or damage caused directly or indirectly by neglect of the insured, or of the claimant (as the case may be) to use all reasonable means to save and preserve the property after damage;
- (f) all interest of foreign nationals in property located, at the time of loss, otherwise than within the United States, the Canal Zone, or the Territories or possessions of the United States;
- (g) all other classes of property heretofore generally excepted by this Corporation, with the approval of the Secretary of Commerce, from the protection authorized by said Act; all claims with respect to which notice of loss and proof of claim have not been or shall not be presented to and filed with this Corporation in accordance with its regulations as from time to time promulgated and in effect; and all claims not proved and established to the satisfaction of the Corporation; the Corporation reserving the right to except from the protec-

tion authorized by the Act such other classes of property as it shall deem advisable.

Be It Resolved Further, That

A. All property insured against war risks by insurers other than this Corporation be, and the same is excepted from protection under the said Act in any amount greater than the excess of the fair cash value of such property over and above the amount of such other insurance, whether collectible or not.

B. Works of art, antiques, stamp and coin collections, manuscripts, books and printed publication more than 50 years old, models, curiosities, and objects of historical or scientific interest owned by commercial dealers, cultural institutions or persons who keep the same open for public display, are excepted from protection under the said Act otherwise than in an amount not exceeding \$25,000 for anyone article of any of the classes in this paragraph "B" described, as well as conditionally excepted from protection as provided in paragraph "1" of this resolution.

C. Furs, jewelry, works of art, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, and objects of historical or scientific interest, when privately owned and not open for public display, are excepted from protection under the said Act otherwise than in an amount not exceeding \$5,000 for any one article of any of the classes in this paragraph "C" described, and not exceeding a

total of \$10,000 for any one interest with respect to any or all of the aforementioned classes of property wherever located, as well as conditionally excepted from protection as provided in paragraph "1" of this resolution.

D. Records, accounts, plans, drawings and formulae are excepted from protection under the said Act otherwise than in an amount not exceeding \$10,000 for any one film, copy, record, account, plan, drawing or formula, as well as conditionally excepted from protection to the extent provided in paragraph "1" of this resolution.

E. Pleasure water-craft while laid up afloat or ashore and pleasure aircraft are excepted from protection under the said Act otherwise than in an amount not exceeding \$10,000 for any one craft, as well as conditionally excepted from protection as provided in paragraph "1" of this resolution.

* * * * *

The foregoing resolution was duly adopted by the Executive Committee of War Damage Corporation on October 2, 1944.

-----,
Secretary.

DEFENDANT'S EXHIBIT C

WDC Form No. 1, July, 1942. No.....

War Damage Corporation

(A corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, herein called the "Corporation.")

Washington, D. C.

[Stamped]: Specimen.

Issued to.....(herein called the "Insured")

Mail address:.....

Effective date:.....

In Consideration of the payment of the premium, the Corporation agrees to indemnify the Insured, and legal representatives, against direct physical loss of or damage to the property described in the attached application which may result from Enemy Attack Including Any Action Taken by the Military, Naval or Air Forces of the United States in Resisting Enemy Attack.

This insurance shall take effect on the effective date herein stated, at noon, standard time, at the place where the property is located, and shall terminate twelve months thereafter, at the same hour.

The representations, terms and conditions of the application attached hereto shall be a part of this policy, and, except as otherwise herein provided, this policy shall cover the property described in the application, for the amounts therein stated, while located at the place(s) stated in the application, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of the Corporation.

The provisions printed on the following pages are made a part of this policy, and this policy shall also be subject to such other provisions, stipulations and agreements as may be added hereto, over the signature of a duly authorized Fiduciary Agent.

In Witness Whereof, the Corporation has executed this policy, but this policy shall not be valid unless countersigned by a duly authorized Fiduciary Agent of the Corporation.

WAR DAMAGE CORPORATION,
/s/ N. L. CLAYTON,
President.

Attest:

A. T. HOBSON,
Secretary.

Countersigned this.....day of....., 19....

.....,
(Authorized Fiduciary Agent)

By.....

Amount of Loss

The amount of loss shall not exceed the actual cash value of the property nor the interest of the Insured therein at the time of loss, nor the amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss. No allowance shall be made for compensation for loss of use, loss of profits, loss resulting from delay or deterioration, loss or im-

pairment of market, cessation of work, fixation of price or value, interruption of business or manufacture or occupancy, or for consequential loss. No allowance shall be made for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction, use or repair.

Concealment or Fraud:

This policy shall be void if, whether before or after a loss, the Insured has wilfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

Property Excluded:

Unless specifically provided in writing hereon, this policy shall not cover accounts, bills, currency, deeds, evidences of debt, securities, money, bullion, stamps, furs, jewelry, precious and semi-precious stones, works of art, statuary, paintings, pictures, etchings, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, objects of historical or scientific interest, pleasure water-craft, pleasure aircraft, standing timber, growing crops, orchards, or any real property which is not a part of a structure or building.

Premium:

The premium required by the regulations of the Corporation shall be paid in full prior to the effec-

tive date. If a check is tendered in payment of premium and such check is not honored upon presentation for the full amount thereof, this policy shall be void.

Perils Not Covered:

The Corporation shall not be liable for loss caused directly or indirectly by:

(a) blackout; burglary, robbery, theft, larceny, pillage or looting, sabotage, vandalism or malicious mischief; or

(b) neglect of the Insured to use all reasonable means to save and preserve the property after damage resulting from the perils herein covered.

Pro Rata Distribution:

If any item of insurance covers blanket in or on more than one building, structure or place, the amount of insurance under such item shall attach in or on each building, structure or place in that proportion which the value of the property in or on each said building, structure or place shall bear to the value of all of the property covered by such blanket item.

This pro rata distribution clause shall not apply if this policy is subject to 90 per cent or 100 per cent coinsurance.

Coinsurance:

The Corporation shall not be liable for a greater proportion of any loss than the amount of insurance under this policy bears to the stipulated percentage of the actual cash value of the property described in

the application at the time when such loss occurs. The stipulated percentage shall be the percentage of coinsurance stated in the application. If the claim for loss is both less than \$10,000 and less than 2 per cent of the total amount of insurance upon the property described in the application, at the time such loss occurs, no special inventory or appraisal of the undamaged property shall be required, and if the property described in the application consists of two or more items, the provisions of this paragraph shall apply to each item separately.

The provisions of this coinsurance clause shall not apply to dwellings comprising less than five family units, nor to farm properties.

Other Insurance:

If there is any other insurance covering the property insured hereunder, whether prior to, subsequent to, or simultaneous with this insurance, which in the absence of this insurance would cover the loss or damage hereby covered, then the Corporation shall not be liable hereunder for more than the excess over and above such other insurance.

Mortgage or Other Interests:

If the application provides that loss hereunder shall be payable in whole or in part to a payee other than the Insured, and the Insured fails to render proof of loss within the time required by this policy, such payee shall, upon notice, as if named as the Insured herein, render proof of loss as herein speci-

fied within sixty days thereafter, and shall be subject to the provisions hereof as to examination under oath, appraisal, time of payment, and bringing suit.

Cancellation:

This policy may be cancelled upon the request of the Insured and surrender of this policy, only in case of change in ownership of the property, or in the Insured's interest therein. If this policy be issued in violation of the regulations of the Corporation in effect at the time of issuance, this policy may be cancelled by the Corporation by delivering or mailing five days' written notice to the Insured, and to the loss payee, if any, at the address given in the application. In the event of cancellation, the net premium shall be prorated and returned in conformity with the regulations of the Corporation.

Requirements in Case of Loss:

In the event of loss, the Insured shall give immediate written notice to the Corporation, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity, cost and actual cash value of each article and the amount claimed thereon, and file with the Corporation a proof of loss within 60 days after the loss, unless such time is extended by the Corporation in writing. Such proof of loss, signed and sworn to by the Insured, shall state the Insured's knowledge and belief as to the time and origin of the loss, the interest of the Insured and all others in the property, the actual cash value of each item thereof and the

amount of loss thereto, and all contracts of insurance covering any of such property. If required, the Insured shall furnish verified plans and specifications of any buildings, fixtures or machinery destroyed or damaged; as often as may be required, exhibit to any person designated by the Corporation all that remains of any property herein covered; submit to examination under oath by any person named by the Corporation and subscribe the same; and, as often as may be required, produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof, if originals be lost, at such reasonable time and place as may be designated by the Corporation, and permit extracts and copies thereof to be made.

Appraisal:

In case the Insured and the Corporation fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select competent and disinterested appraiser and notify the other of the appraiser selected within twenty days after such demand. The appraisers shall first select a competent and disinterested umpire, and, in the event of their failure within fifteen days to agree upon such umpire, then, on request of the Insured or the Corporation, such umpire shall be selected by a Judge of a Federal Court of the district in which the property is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only,

to the umpire. An award in writing, so itemized, of any two when filed with the Corporation shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and the umpire shall be paid by the parties equally.

Corporation's Options:

It shall be optional with the Corporation to take all or any part of the property at the agreed value, and also to repair, rebuild, or replace the property destroyed or damaged with other of like kind and quality within a reasonable time on giving notice of its intention so to do within thirty days after the receipt of the proof of loss; but there can be no abandonment to the Corporation of any property.

Payment of Loss:

Any loss shall be payable sixty days after proof of loss, as herein provided, is received by the Corporation and ascertainment of the loss is made either by agreement between the Insured, mortgagee or loss payee, if any, and the Corporation, expressed in writing, or by the filing with the Corporation of an award as herein provided, and if the loss shall be payable to a payee other than the Insured, the amount of any loss shall be payable to such payee as interest may appear.

Suit:

No suit or action for recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been

complied with, or unless commenced within twelve months after the date of loss.

Subrogation:

The Corporation may require from the Insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by the Corporation.

Waiver:

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirements or proceeding on the part of the Corporation relating to appraisal or to any examination provided for herein.

Extension of Time:

If the Insured is unable to comply with any of the provisions of this policy applicable to a loss because of enemy action, occupation or control, the Insured's right of recovery shall not be prejudiced, provided the Insured shall comply with such provisions within a reasonable time after the Insured becomes able to do so, but in no event later than six months thereafter.

DEFENDANT'S EXHIBIT D

[Copy]

Release. RFC-1718

The Secretary of Commerce
Washington

December 30, 1942.

Jesse Jones, Secretary of Commerce, today announced that War Damage Corporation will investigate claims for loss of property in transit between any points located in the United States, and the Canal Zone, and the Territories and possessions of the United States with the exception of the Philippine Islands. All claims for loss of property in transit between such points which resulted directly from enemy attack between December 6, 1941, and July 1, 1942, should be filed with the Washington office of War Damage Corporation on or before February 1, 1943. Investigation of such claims will be conducted in accordance with the provisions of Section 5g of the Reconstruction Finance Corporation Act, as amended.

All claimants are notified that, notwithstanding the investigation, War Damage Corporation reserves the right, in accordance with the statute and the regulations issued thereunder, to determine whether or not the Corporation is liable.

[Endorsed]: Filed Nov. 12, 1946. [20]

[Title of District Court and Cause.]

STIPULATION AMENDING ANSWER

It Is Hereby Stipulated, by the parties hereto through their respective counsel, that defendant's

Answer filed in the above-entitled court, November 12, 1946, be deemed amended in the following respects:

1. In the Third Separate and Affirmative Defense appearing on pages five and six of the said Answer, the word "District" is inserted before the word "Courts" on line 1, page 6. The Third Separate and Affirmative Defense is to read as follows:

"The court is without jurisdiction in the matter because jurisdiction of the action pleaded has not been given to the District Courts."

2. The last seven words of the Fifth Separate and Affirmative Defense, to wit:

". . . War risk insurance protection offered by it" [21] which appears on page 7, line 7 of said Answer, is stricken and in lieu thereof, the words ". . . protection by War Damage Corporation" is substituted, so that the last clause of the Fifth Separate and Affirmative Defense, starting with the semicolon on page 7, line 3, reads:

". . . that under and pursuant to the provisions of its "Regulation A" and in accordance with its established administrative practice defendant did exclude and except the loss referred to in the Complaint from the protection by the War Damage Corporation."

3. The words "subsequent to" appearing on line 1, page 9, in the Eighth Separate and Affirmative Defense of said Answer, are stricken and in lieu thereof the word "between" is substituted so

that the first clause of said Eighth Separate and Affirmative Defense reads as follows:

“That pursuant to Section 5g of the Reconstruction Finance Corporation Act as added by the act of March 27, 1942, Ch. 198, Sec. 2, 56 Stat. 175, Title 15 U.S.C.A., Sec. 606b-2, and the authorized and established administrative practice of defendant, all losses sustained between December 6, 1941, and a date determined by the Secretary of Commerce, to wit, July 1, 1942, for which the defendant was and is authorized to give any protection, were and are adjusted as if defendant's policy of insurance (W.D.C. Form No. 1) were in fact in force at the time of such loss and were in fact issued for such loss; . . .”

The above-mentioned amendments to defendant's Answer shall be considered as effective with the filing of this stipulation.

Dated January 15th, 1947.

LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff.
ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILICK, GEARY, OLSON &
CHARLES,

Attorneys for Defendant,
War Damage Corporation.

[Endorsed]: Filed Jan. 16, 1947. [22]

[Title of District Court and Cause.]

STIPULATION

It is hereby Stipulated and Agreed by and between the plaintiff and defendant, through their respective counsel, that at the time of her loss, the fair cash market value of the SS Lahaina was Six Hundred Fifteen Thousand Dollars (\$615,000). This stipulation is made subject to the objections by defendant that market value of the SS Lahaina is irrelevant, immaterial and not the measure of plaintiff's recovery, if any, herein, and said objections, and all of the defenses set forth in its answer on file herein, are hereby expressly reserved by defendant.

LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff.

ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON, &
CHARLES,
Attorneys for Defendant.

[Endorsed]: Filed April 30, 1947. [25]

[Title of District Court and Cause.]

STIPULATION

It is hereby Stipulated and Agreed by and between the parties to the above-entitled action that plaintiff, Matson Navigation Company, had no war risk insurance of any kind covering the loss of the SS Lahaina when said vessel was sunk and became a total loss as a result of enemy attack on December 11 and 12, 1941. The term, "war risk insurance" as used herein does not refer to the claim for such loss asserted in the within action.

LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff.
ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON,
ADAMS & CHARLES,
Attorneys for Defendant.

[Endorsed]: Filed April 30, 1947. [26]

[Title of District Court and Cause.]

STIPULATION

It is hereby Stipulated and Agreed by and between the parties to the above-entitled action that the annexed Exhibit "A" is a true copy of page 3 of that certain unofficial publication know as "The New York Journal of Commerce" in the issue of said publication for December 31, 1942, in which

appears the article under the headline "WDC to Consider Claims for Losses."

It is further Stipulated and Agreed that at the time of said issue, namely, December 31, 1942, plaintiff, Matson Navigation Company, was a subscriber to said "The New York Journal of Commerce" for delivery of the same at each of the following address: [27]

215 Market Street, San Francisco, California
30 Rockefeller Plaza, New York, New York
913-914 Southern Building, Washington, D. C.
480 Main Street, San Francisco, California

It is further Stipulated and Agreed that said plaintiff reserves all objections to the admissibility of said facts stipulated to as above in case the said defendant should offer said facts in evidence at the trial or hearing of said cause.

LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff.

ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON &
CHARLES,
Attorneys for Defendant.

EXHIBIT A

The Journal of Commerce and Commercial,
New York, Thursday, December 31, 1942

WDC TO CONSIDER CLAIMS FOR LOSSES

Limited to Those Caused by Enemy Action on
on Routes to Canal Zone, Territories

(Bureau of Journal of Commerce)

Washington. Dec. 30.—War Damage Corporation is prepared to look into claims for the loss of property through enemy action between any points in the United States and the Canal Zone and, with the exception of the Philippines, in any of the territories and possessions of the United States, Secretary of Commerce Jesse Jones announced today.

Secretary Jones set February 1 as the deadline for filing of all claims for loss of property in transit between those points which resulted directly from enemy attack between December 6, 1941, and July 1, 1942. Mr. Jones said that investigation of such claims would be conducted in accordance with provisions of Section 5G of the Reconstruction Finance Corporation Act, and that all claimants had been notified that, notwithstanding the investigation, WDC would reserve the right to determine whether or not it is liable in each case. Asked for a definition of a "direct enemy attack" in determining WDC liability, a spokesman for the corporation said today that a cargo of oil, lost through torpedoing, would be considered a valid case, but that a cargo lost through enemy sabotage would not.

[Endorsed]: Filed April 30, 1948. [30]

In the United States District Court for the Northern District of California, Southern Division

No. 24575-G.

MATSON NAVIGATION COMPANY,
a corporation,

Plaintiff,

vs.

WAR DAMAGE CORPORATION, a corporation,
Defendant.

Lyman Henry, Kent A. Sawyer, Hall, Henry & Oliver, 215 Market Street, San Francisco, Calif.,
Attorneys for Plaintiff.

Allan E. Charles, Edward D. Ransom, Lillick, Geary, Olson, Adams & Charles, 311 California Street, San Francisco, Calif., Attorneys for Defendant.

OPINION

Goodman, District Judge.

While en route from the Hawaiian Islands to Continental United States on or about December 11, 1941, plaintiff Matson Navigation Company's steamship Lahaina was attacked and sunk by a Japanese submarine. By this suit, filed March [33] 22, 1945, plaintiff seeks to recover from the defendant War Damage Corporation, the value of the steamship, which, the parties agree, is the sum of \$615,000. Right of recovery is claimed under an amendment to the Reconstruction Finance Corporation Act which on March 27, 1942, somewhat over three months after commencement of hostilities be-

tween the United States and Japan, became law. (15 USC 606b-2; 56 Stat. 175, Sec. 5 g.) By the terms of this amendatory statute, defendant was authorized to provide, not later than July 1, 1942 insurance protection against loss or damage to property as a result of enemy attack, subject to such general exceptions as defendant, with the approval of the Secretary of Commerce might deem advisable, upon the payment of premiums or charges which defendant, also with the approval of the Secretary of Commerce, might fix. So far as here pertinent, the statute also provided that such insurance protection should apply only to property situated in the United States, the Philippine Islands, the Canal Zone, territories and possessions of the United States and such other places as the President might determine to be under the dominion or control of the United States and also to such "property in transit" between any of the localities designated.

Recognizing that protection should be afforded to those whose property might be lost or damaged in the interval between the declaration of war against Japan and the date when the defendant would become an operating and functioning entity, Congress further provided in this statute that losses occurring during such interim should be compensated by the defendant without any contract of insurance, payment of premium or other charge, in the same manner as if there were insurance contract coverage. The full text of § 606 b2 is set out in an appendix hereto. [34]

Three years later, to wit, on December 29, 1944, the plaintiff presented its claim to the defendant for the value of the Lahaina. On January 19, 1945 the claim was denied upon the ground that the statutory provisions regarding property in transit were not interpreted by defendant as intended to have application to vessels in transit.

The primary question squarely posed in this litigation therefore is: whether the act of the defendant corporation in excepting vessels in transit from insurance coverage was a proper interpretation of the statute; or put in another way, was the vessel Lahaina the kind or type of "property in transit" entitled to protection under the terms of the statute during the interval between the declaration of hostilities between the United States and Japan and the effective date of the commencement of functioning by the defendant corporation.¹

No such question has been heretofore decided by the courts of the United States.

The testimony of so-called experts in the insurance field was produced at the trial concerning the meaning of the words "property in transit." The Court is of the opinion that this testimony is of little, if any, value in determining the extent and meaning of the coverage which Congress provided for in this statute. The meaning of the statutory

¹If defendant's interpretation of the statute was correct it obviously acted properly in denying plaintiff's claim and the issue as to the scope of its statutory power to make general exceptions from coverage of certain property becomes irrelevant.

language must be resolved against the background of the history of and the circumstances impelling the legislation as well as from what may be gleaned from the [35] Congressional proceedings.² These accepted guides to statutory interpretation reveal the following:

After Pearl Harbor, fear of enemy bombing along the Coasts of Continental United States was widespread. Owners of property there situated found themselves uninsured against loss due to enemy attack and unable to provide themselves with insurance of that type through private insurance companies. This tended to undermine morale and affect the maximum production essential to successful warfare.³ To allay the fears of such persons, and believing it in the public interest to act quickly as well as within his power so to do, Federal Loan Administrator Jesse H. Jones publicly announced by press release dated December 13, 1941, future governmental extension, (through a corporate instrumentality of the Reconstruction Finance Corporation, finally denominated "War Damage Corporation") of reasonable financial protection to owners of property in the Continental United States against enemy attack, without charge but

²Several special defenses have been urged by defendant, but it is clear to the court that the issue presented can and therefore should be squarely determined from the meaning of the legislative language itself.

³Senate Report No. 1012 accompanying S.2198, p. 2.

with certain exceptions and reservations. By a later press release on December 22, 1941, Mr. Jones publicly announced the extension of similar protection to owners of property in Alaska, Hawaii, Philippine Islands, Puerto Rico and the Virgin Islands.

Soon thereafter Senate Bill 2198, sponsored by Mr. Jones, was introduced in Congress. This bill aimed to put the Legislative stamp of approval upon and to provide the means for a government program of reasonable war risk protection [36] to those owners of property in the United States and its territories and possessions, who were unable to find that protection through private sources.

Hearings on the proposed legislation were first held in January 1942 before the Senate Committee on Banking and Currency. The foregoing reasons for and general objectives of the legislation were there explained by Mr. Jones.⁴ The proposed legislation, as so stated by him, did not contemplate provision for maritime insurance, and was prospective in operation. At these hearings also appeared the Honorables Samuel W. King and Anthony H. Diamond, Delegates respectively from Hawaii and Alaska. Each urged amendment of the bill to extend war risk protection to goods in transit between the United States and the Territory each represented. Their proposal was motivated by the almost complete dependency of these territories on water-borne commerce with the United States. The Delegates explained that following Pearl Harbor, commercial rates on cargo war risk insurance had

⁴Senate Committee Hearings, p. 6, 7, 9, 10, 11.

increased prohibitively and to the extent of seriously threatening the economy of the Territories unless relief were afforded and that since such insurance could not be obtained from the Maritime Commission, such property should receive the benefits of the legislation under consideration.⁵ [37]

The Hawaiian Delegate further proposed to make the bill retroactive to December 7, 1941, to cover the Pearl Harbor losses,—these losses having occurred before protection was for the first time promised by the press release of December 13, 1941.

After the Territorial Delegates had presented their case, Senator Clark of Idaho proposed an amendment to extend protection to property situated in “or in transit between” the United States and the described Territories and possessions.⁶ The

⁵Senate Committee Hearings, p. 25, 27, 28, 29, 31, 32, 33.

As to the availability of marine war risk insurance under the then provisions of the Merchant Marine Act, 1936, as amended 1940 (54 Stat. 689), the situation, as represented, was this: The Maritime Commission by such Act was empowered to issue such insurance only on American vessels and their cargoes. Since shippers of cargo could not determine in advance the type of vessel in which the same would be transported, the practical result was that while insurance on American hulls could be and was made available by the Maritime Commission under the Act, cargoes, except in a very limited way, were unprotected. Senate Committee Hearings p. 97, 99; See also House Committee Hearings on S.2198, p. 41, 42.

⁶Senate Committee Hearings, p. 73, 74.

discussion which followed is persuasive that all participants in the same were agreed that while such in-transit cargo needed and should have the protection sought by the Hawaiian and Alaskan Delegates, nevertheless the proposed bill should not extend its coverage to any maritime war risks if insurance therefor was obtainable through the Maritime Commission or otherwise.⁷

Following assurance by Mr. Jones that in the administration of the proposed law, marine protection thereunder would be limited to cases where the Maritime Commission was powerless to act, the substance of the Clark "property in transit" amendment was adopted.⁸ The bill, however, as reported by the Senate Committee, (S. Report 1012) was not retroactively effective. It contemplated a plan of insurance covering only future risks compensable through the War Damage Corporation, and based on contract and premium charges as to coverages exceeding a specified minimum amount.

On February 3, 1942, after discussion and debate, the bill with Senate Committee amendments was passed in the [38] Senate. (88 Cong.Rec. 986-999). During the discussion preceding its passage, Senator Maloney, speaking on behalf of Mr. Wagner, Senate sponsor of the bill, pointed out that the coverage originally contemplated thereby had been extended by the "property in transit" clause, not only to "the cargo of the vessel itself" but also to

⁷Senate Committee Hearings, p. 97, 98, 99.

⁸Senate Committee Hearings, p. 99, 100.

“the personal effects of people traveling on such vessels.”⁹ Coverage of vessels themselves however, was nowhere indicated in these discussions.

On February 2, 1942, Senate Bill 2198 as reported out of the Senate Committee came before the House Committee on Banking and Currency. Mr. Jones again stated the general reasons for and objectives of the bill, explaining that under Senate Committee Amendments, goods in transit would be covered only when insurance could not be obtained from the Maritime Commission, but that in his opinion the vessels themselves would not be covered.¹⁰

There was general accord with the view as expressed in the Senate Committee that Marine War Risk insurance should not be an objective of this bill, and, further that it should more specifically so state.¹¹ The following House Committee Amendment was therefore agreed to: “That such protection shall not be extended to property in transit upon which the United States Maritime Commission is authorized to provide marine war risk insurance.”¹² [39]

⁹88 Cong. Rec. p. 989-990.

¹⁰House Committee Hearings, p. 18, 21, 22.

¹¹House Committee Hearings, p. 44-47.

¹²House Committee Hearings, p. 88, 93.

It is apparent from the Committee discussions that what prompted this specificity of language was a lack of certainty on the members' part with respect to the exact scope of the Merchant Marine Act, and a desire not to duplicate any of the functions there delegated to the United States Maritime Commission.

The House Committee was, however, also of the opinion that since neither the Pearl Harbor losses of December 7, 1941, nor the in-transit cargo losses suffered before the public announcement of coverage, of December 13, 1941, were within the purview of that announced coverage, such losses, if not otherwise compensable, should as well receive the benefits of the proposed bill.¹³ It was therefore agreed that coverage should be extended not only to the defined losses which may result from enemy attack, but also to those which "may have heretofore resulted,"¹⁴ so that all persons without opportunity of having obtained war risk insurance on such past losses would be protected until a government created insurance plan was worked out.¹⁵ To fully accomplish this purpose, a further committee amendment was adopted to thus extend coverage of the bill without premium charge for the period from December 7, 1941 to a date fixed by the Federal Loan Administrator not later, however, than July 1, 1942¹⁶ (the bill having already been amended to provide for future coverage on a contract and premium paying basis). Chairman Steagall explained during Committee discussion that the bill with these amendments would cover goods in transit lost by enemy action from and after December 7, 1941 subject, however, to the proviso limiting

¹³House Committee Hearings, p. 80-81.

¹⁴House Committee Hearings, p. 82.

¹⁵House Committee Hearings, p. 84.

¹⁶House Committee Hearings, p. 94.

such coverage to property in transit upon which the United States Maritime Commission was not authorized to provide similar coverage.¹⁷ As so amended, Senate Bill 2198 was reported to the House on [40] February 6, 1942,¹⁸ (88 Cong. Rec. 1154) and was passed on March 2, 1942. (88 Cong. Rec. 1921).

During the discussion preceding the bill's passage in the House¹⁹ inquiry was made whether the government was "taking a direct loss in all of the torpedoings of cargoes and oil tankers and things like that . ." Mr. Bland, referring to H.R. 6554 to amend the Merchant Marine Act of 1940, replied that "things like that are being taken care of under the war-insurance bill, which was extended today. I have just put into the basket a report on the amendment to that bill, which covered every phase of the marine liability and risk." (88 Cong. Rec. 1903.)

After Senate disagreement with the House Amendments, the bill went to a Committee of Conference. The Conference Report (House Report No. 1907) retained the House Amendments. The

¹⁷House Committee Hearings, p. 93.

¹⁸House Report No. 1752.

On the same day, H.R. 6554 sponsored by Mr. Bland was introduced. This bill was designed to enlarge the scope of the Merchant Marine Act of 1940, and would permit of the issuance of insurance by the Maritime Commission on substantially every type of Marine war risk.

¹⁹88 Cong. Rec. 1901-1921.

only conference change here significant was the House Amendment, revised in Conference to read as follows: "Provided, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war risk insurance."²⁰

The conference Report did not explain the reason for this change nor was the same later discussed in either [41] Senate or House.²¹ In the House discussion of the Report just prior to the bill's passage, Mr. Steagall did answer affirmatively the question whether the "sinkings" taking place would be covered during the free protection period. (88 Cong. Rec. 2699) Coverage of "sinkings" during that period was again later mentioned with reference to the advisability, in view of their increased number, of covering losses arising from such sinkings without premium requirements. (88 Cong. Rec. 2701) Certain statements on the floor of Congress might be pointed out as indicative of a difference in understanding on the part of individual Congressional members as to the true meaning ascribable

²⁰The bill as reported by the Conference Committee, became law on March 17, 1942. (56 Stat. 174.)

²¹The most reasonable explanation for this change would seem to be that the legislators felt that by July 1, 1942, if not earlier, the Merchant Marine Act would have been so effectively amended to cover all maritime risks as to permit of the desired withdrawal of the War Damage Corporation from any field of maritime activity.

to the phrase "property in transit" or the purpose of its insertion in the bill by Senate Committee Amendment.²²

But nowhere throughout the proceedings in Congress or in Committee is there any statement or discussion indicating a conscious Congressional intent to extend the scope of the phrase beyond that originally contemplated.

The entire history of the legislation, viewed in the background of its origin and objectives, convincingly exhibits a general Congressional intent to extend reasonable free government protection against loss from enemy attack, to property in the United States, its territories and possessions, and to goods undergoing transportation between these points,—until a system of paid insurance contemplated thereby had been put in operation; and to thereafter extend similar protection under contract of insurance with premium [42] payment, except as to goods in transit insurable by the United States Maritime Commission. Coverage at any time by the War Damage Corporation, of the vehicle of maritime transportation,—the vessel itself,—was never within the contemplation of Congress.

The gist of all discussions, whether in Committee or on the floor of Congress, from the time of Mr. Jones' first public announcement to the date of passage of the Act, concerned the intent to protect cargoes in transit which were not insurable by the

²²See statements on p. 28 of plaintiff's Opening Brief.

Maritime Commission and insurable otherwise only through private sources at prohibitive costs.

It is true, as pointed out by plaintiff, that there was reference to "ships" and to "sinkings" on the floor of Congress during discussions preceding passage of the Act. But such method of ascertaining intent is specious. An isolated question and answer become misleading if not fairly set into the whole picture. Thus in the House discussions, asked whether cargoes and ships on the high seas were to to be covered, the response made consecutively by each of the two different House sponsors of both the Act here involved and the amendments to enlarge the scope of the Merchant Marine Act was in the affirmative. (88 Cong. Rec. 1903.)

Congress was engaged between January and April 1942 with a comprehensive and overall plan of insurance protecting property on land and sea. This Act and Amendments to the Merchant Marine Act were the instrumentalities discussed to accomplish this objective. Each was intended to take care of different risks. Hence it is that discussions in Congress must be related severally to the proposed statutes.

Plaintiff entirely misconceives the function of the defendant as intended by Congress. Defendant's function as originally conceived was to insure residents of the Continental [43] United States against damage to their property from bombing. Hundreds of thousands of policies were thereafter issued to residents of Continental United States. The corporation still has in its treasury over \$200,000,000 col-

lected in premiums in performing this service. The defendant corporation was never proposed to have anything to do with the sea. This was in the field of the Maritime Commission. The defendant only "put to sea" because of the needs of Hawaii and Alaska—to enable these territories to receive the goods needed to carry on during the stress of the great emergency and only to the extent of protecting cargoes en route either way not insurable by the Maritime Commission. Ships were otherwise covered.

Judgment for defendant.

Dated: November 17, 1947. [44]

Appendix

Title 15 USCA Sec. 606 b-2

(2) The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to sections 606 b and 606 j of this title; and the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this subsection. Such funds shall be supplied only upon the request of the Secretary of Commerce, with the approval of the President, and the aggregate amount of the funds so supplied shall not exceed \$1,000,000,000. The Reconstruction Finance Corporation is authorized

to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which shall not be later than July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2)

to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico; Provided, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, [45] And prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage. Jan. 22, 1932, c.8, § 5g, as added Mar. 27, 1942, c. 198 § 2, 56 Stat. 175. [46]

[Endorsed]: Filed Nov. 17, 1947.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 17th day of November, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman.

[Title of Cause.]

ORDER FOR JUDGMENT

Ordered that judgment go for the defendant, as will more fully appear in the written opinion this day filed. [47]

[Title of District Court and Cause.]

NOTICE

To: Messrs. Hall, Henry & Oliver, 215 Market St.,
San Francisco, Calif.; Messrs. Lillick, Olson,
Geary, Adams & Charles, 311 California St.,
San Francisco, Calif.

You Are Hereby Notified that on Nov. 17, 1947,
an Opinion was entered of record in this office in
the above-entitled case.

C. W. CALBREATH,

Clerk, U. S. District Court.

San Francisco, California, Nov. 18, 1947. [48]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 12th day of December, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

**ORDER THAT FINDINGS OF FACT AND
CONCLUSIONS OF LAW BE FILED**

Ordered that findings of fact and conclusions of law as drafted by the Court be filed in the form signed. [62]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

The above-entitled action came on for trial on the 30th day of April, 1947, before the Honorable Louis E. Goodman, United States District Judge. Messrs. Hall, Henry & Oliver, by Lyman Henry, Esq., and Kent Sawyer, Esq., appeared for plaintiff, Matson Navigation Company, a corporation, and Messrs. Lillick, Geary, Olson & Charles, by Allan E. Charles, Esq., and Edward D. Ransom, Esq., ap-

peared for the respondent, War Damage Corporation. Evidence, both oral and documentary, was received by the Court and briefs were thereafter filed by the attorneys representing the respective parties. The Court having considered the evidence and the law and the briefs of such parties, having been fully advised [63] in the premises, and having filed its written opinion ordering the entry of a judgment for the defendant, now adopts and makes its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Court finds as its Findings of Fact that:

I.

Matson Navigation Company, at all times mentioned in the complaint and herein, was and is a corporation organized under the laws of the State of California, with its principal office and place of business at 215 Market Street in the City and County of San Francisco, State of California.

II.

On and prior to December 12, 1941, plaintiff was the owner of the American steamship Lahaina, which said vessel was at said time at sea, proceeding from a port in the Hawaiian Islands towards San Francisco. On December 11, 1941, the said steamship was shelled and seriously damaged by the attack of a submarine belonging to the Empire of Japan, a public enemy of the United States. As the result of said shelling, the Lahaina sank in the waters of the Pacific Ocean, a long distance

from shore, on December 12, 1941, and was a total loss.

III.

Defendant War Damage Corporation is a corporation organized and existing pursuant to the provisions of sections 5-d and 5-g of the Reconstruction Finance Corporation Act of January 22, 1932, 47 Stat. 5, as amended, supplemented and revised.

IV.

On or about December 29, 1944, plaintiff made a claim upon defendant in the amount of \$820,000 for the loss of the steamship Lahaina. [64]

On January 19, 1945, defendant denied said claim. On March 22, 1945, plaintiff filed the within action. Defendant has not compensated plaintiff for said loss, or any part of it.

The reasonable value of the steamship Lahaina at the time of her loss was \$615,000, as stated by a stipulation entered into between plaintiff and defendant.

V.

The matter in controversy exceeds the sum of \$3,000.

VI.

The steamship Lahaina, at the time of her loss, was not "property situated in the United States" or in its territories or possessions.

VII.

The steamship Lahaina was not, on December 12, 1941, or at any other time, "property in transit"

between a port or ports of the Hawaiian Islands or of any of the territories and possessions of the United States and a port of the Continental United States within the meaning of Section 5-g of the Reconstruction Finance Corporation Act, as amended by the Act of March 27, 1942 (15 USC, sec. 606 b-2) and hence its loss was not compensable under the provisions of said Act.

CONCLUSIONS OF LAW

And, as Conclusions of Law from the foregoing Findings of Fact, the court finds that:

I.

The defendant is not liable to the plaintiff for the loss of the steamship Lahaina.

II.

Section 5-g of the Reconstruction Finance Corporation Act, as amended, was not intended to, and did not, afford [65] protection to seagoing ships.

III.

Defendant is entitled to recover costs from the plaintiff.

Let judgment be entered accordingly.

Dated: San Francisco, California, December 11th, 1947.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed Dec. 12, 1947. [66]

In the Southern Division of the United States
District Court for the Northern District of
California

Civil Action No. 24575-G

MATSON NAVIGATION COMPANY,
a Corporation,

Plaintiff,

vs.

WAR DAMAGE CORPORATION, a Corporation,
Defendant.

JUDGMENT

The above-entitled action having come on for trial on the 30th day of April, 1947, before the Honorable Louis E. Goodman, United States District Judge, and Messrs. Hall, Henry & Oliver, by Lyman Henry, Esq., and Kent Sawyer, Esq., appearing for plaintiff, Matson Navigation Company, a corporation, and Messrs. Lillick, Geary, Olson & Charles, by Allan E. Charles, Esq., and Edward D. Ransom, Esq., appearing for the defendant, War Damage Corporation, and evidence, both oral and documentary, having been received by the Court and briefs having been thereafter filed by the attorneys representing the respective parties, the Court having considered the evidence and the law and the briefs of such parties, and having been fully advised in the premises, and having filed its written opinion ordering an entry of the judgment for the defendant, and having [67] adopted and filed its Findings of Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed

that plaintiff take nothing by said action, that the action be and it is hereby dismissed on the merits, that defendant have and recover from plaintiff its costs in the action and that defendant have execution therefore. (Costs taxed at \$117.40.)

Dated: San Francisco, California, December 19th, 1947.

LOUIS E. GOODMAN,
United States District Judge.

Approved as to form as provided in Rule 5(d).

LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff.

[Endorsed]: Filed and Entered Dec. 19, 1947.

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To: Messrs. Hall, Henry & Oliver,
215 Market Street,
San Francisco, California.

You and Each of You Are Hereby Notified that on December 19, 1947, judgment for the defendant was entered in the above-entitled case.

Dated: San Francisco, December 23, 1947.

LILLICK, GEARY, OLSON &
CHARLES,

Attorneys for Defendants.

(Admission of Service.)

[Endorsed]: Filed Dec. 23, 1947. [73]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Matson Navigation Company, a corporation, the plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from: the judgment for defendant entered herein on December 19, 1947; the judgment for defendant embodied in the Findings of Fact and Conclusions of Law and order for filing the same filed and entered herein on December 12, 1947; the judgment for [74] defendant embodied in the opinion of the Court filed and entered herein on November 17, 1947; and the judgment for defendant, under minute order, entered herein on November 17, 1947.

Dated: February 10th, 1948.

HERMAN PHLEGER,
MAURICE E. HARRISON,
GREGORY A. HARRISON,
BROBECK, PHLEGER &
HARRISON,
LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff,
Matson Navigation Co.

[Endorsed]: Filed Feb. 10, 1948. [75]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Matson Navigation Company, a corporation, plaintiff and appellant in the above-entitled action, hereby designates for inclusion in the Record on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause the complete record and all the proceedings and [80] evidence in the said action.

Dated: February 16, 1948.

HERMAN PHLEGER,
MAURICE E. HARRISON,
GREGORY A. HARRISON,
BROBECK, PHLEGER &
HARRISON,
LYMAN HENRY,
HALL, HENRY & OLIVER,

Attorneys for Matson Navigation Company, Plaintiff and Appellant.

Service of the within designation and receipt of a copy thereof is hereby admitted this 16th day of February, 1948.

/s/ ALLAN E. CHARLES,
/s/ EDWARD D. RANSOM,
LILLICK, GEARY, OLSON,
ADAMS & CHARLES,

Attorneys for War Damage Corporation, Defendant and Appellee.

[Endorsed]: Filed Feb. 16, 1948. [81]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

It Is Hereby Ordered that the time for filing the record on appeal in the above-entitled cause with the United States Circuit Court of Appeals for the Ninth Circuit, and the time for docketing the appeal therein, be, and each such time hereby is, extended to the 20th day of April, 1948.

So Ordered this 4th day of March, 1948.

LOUIS E. GOODMAN,
United States District Judge.

Approved:

/s/ ALLAN E. CHARLES,
/s/ EDWARD D. RANSOM,
LILLICK, GEARY, OLSON &
CHARLES,
Attorneys for Defendant and
Appellee.

[Endorsed]: Filed Mar. 4, 1948. [82]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

It Is Hereby Ordered that the time for filing the record on appeal in the above-entitled cause with the United States Circuit Court of Appeals for the Ninth Circuit, and the time for docketing the appeal therein, be, and each such time hereby is, extended to the 20th day of May, 1948.

So Ordered this 7th day of April, 1948.

/s/ DAL M. LEMON,

United States District Judge.

Approved:

ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON,
ADAMS & CHARLES,
Attorneys for Defendant and
Appellee. [83]

[Endorsed]: Filed April 8, 1948.

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL
EXHIBIT TO THE CIRCUIT COURT OF
APPEALS

The Court being of the opinion that the original of Plaintiff's Exhibit 1 should be sent to the United States Circuit Court of Appeals for the Ninth Circuit in lieu of a copy thereof, it is hereby ordered that the same be transmitted by the Clerk of this Court with the record on appeal in the above-entitled cause to the Clerk of the said Circuit Court of Appeals and that the same be returned to the Clerk of the above-entitled Court upon the final disposition of said cause upon appeal.

Dated: May 4th, 1948.

LOUIS E. GOODMAN,
United States District Judge.

Approved:

ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON,
ADAMS & CHARLES,
Attorneys for Defendant and
Appellee.

[Endorsed]: Filed May 4, 1948. [84]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 84 pages, numbered from 1 to 84, inclusive, contain a full, true, and correct transcript of the records and proceedings in the cause of Matson Navigation Co. vs. War Damage Corporation No. 24575 G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$8.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 7th day of May, A.D. 1948.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ E. H. NORMAN,
Deputy Clerk. [85]

In the Southern Division of the United States
District Court in and for the Northern District
of California

No. 24,575-G—Civil Action

MATSON NAVIGATION COMPANY,
a Corporation,

Plaintiff,

vs.

WAR DAMAGE CORPORATION, a Corporation,
Defendant.

REPORTER'S TRANSCRIPT

Wednesday, April 30, 1947

Before: Hon. Louis E. Goodman,
Judge.

Appearances:

For Plaintiff: Lyman Henry, Esq., Kent A. Sawyer, Esq., and Gregory Harrison, Esq.

For Defendant: Lillick, Geary, Olson and Charles, by Allan E. Charles, Esq., and Edward D. Ransom, Esq. [1*]

The Clerk: Matson Navigation Company vs. War Damage Corporation.

Mr. Henry: Ready.

Mr. Charles: Ready, your Honor.

Mr. Henry: If the Court please, this is an action by the Matson Navigation Company as former owner of the SS. Lahaina, which was sunk by enemy

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

attack, submarine shelling, on December 11 and 12, 1941; in other words, within four or five days after the attack on Pearl Harbor.

The War Damage Corporation, the defendant in this action, represented by Mr. Charles and Mr. Ransom, is a separate entity, a corporation formed by the Reconstruction Finance Corporation and expressly made subject to the power to sue and also to be sued in any court of competent jurisdiction, and the Complaint sets forth the statutory grounds for the jurisdiction of this Court in our opinion. I won't mention that now.

Many of the things that could be in detail mentioned to your Honor will, of course, be covered by briefs on this matter because it largely involves legal issues.

Just a few brief statements as to the facts of the loss. The SS. Lahaina was a vessel owned by the Matson Navigation Company and had been trading many years between the Hawaiian [2] Islands and Pacific Coast ports, particularly California. She sailed from Aukini, a port in the Hawaiian Islands, on December 4, or some three days before Pearl Harbor in the year 1941. She was enroute from Aukini to San Francisco on that particular voyage, or as we like to put it, she was "in transit" from ———— to San Francisco. The Court, of course, will recall the confusion, uncertainty and apprehension, even that existed in the minds of the general public following Pearl Harbor and the great fear of losses from enemy attack, and that there was no cer-

tainty that a person might not be subjected to a loss that he was more or less an innocent victim of. With possibly that primary thought in mind, to alleviate that very understandable apprehension, Mr. Jesse Jones, who was the Federal Loan Administrator and also Secretary of Commerce at the time, on December 13, 1941, issued a so-called public announcement that reasonable protection against loss resulting from enemy attacks sustained by property owners in the continental United States through damage to buildings and personal property would be furnished by a corporation that was organized then and there under the authority that was assumed and existed under the Reconstruction Finance Corporation Act, dating back some months prior to the war, of course, so far as that authority was concerned, and the corporation was known originally as the War Insurance Corporation. Its name was later changed to the name under [3] which the defendant appears in this action, the War Damage Corporation. A fund of One Hundred Million Dollars, the limit of the then authority under the Reconstruction Finance Corporation Act, was made available to this War Insurance, or I will refer to it for simplicity as the War Damage Corporation. It is the same entity, just a change of name. No premium for the time being was to be charged, and the formalities of declarations and that sort of thing were waived or were not required.

The matter continued on that basis, that is, the public announcement by Mr. Jesse Jones, until the

act of Congress, which finally became law on March 27, 1942, and that is the statute under which we are seeking recovery in this action, except for one minor change shortly after the first public announcement on December 13, 1941: On December 22, I believe it was, 1941, an announcement was made that this protection that was originally only for losses in the continental United States would be extended to territories and possessions of the United States.

Then in January, 1942, bills were introduced in both houses of Congress to validate or extend and make more certain the protection that had been announced under this public announcement or these public announcements of the Federal Loan Administrator, and also to increase the fund which was authorized from One Hundred Million Dollars to the sum of One Billion [4] Dollars, and after a number of changes or amendments in the course of the legislation, the plan was finally adopted as a public law on March 27, 1942, and this statute, as mentioned before, is the Act under which we are suing.

The statute is in the form of an amendment to Section, or an addition by amendment to Section 5(g) of the Reconstruction Finance Corporation Act, and is found in Section 606 (b) of Title 15 of the United States Code. For convenient reference I simply had that run off on a separate page, and I will give opposing Counsel a copy of it. It may be in the course of discussions there will be some reference to it.

The Act provided that the Reconstruction Finance Corporation was authorized to continue to supply funds to the War Damage Corporation in an aggregate amount of One Billion Dollars and that the War Damage Corporation was authorized to use such funds—and I am quoting now—“to provide through insurance, reinsurance or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack, with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable.”

And continuing with the substance of the Act, “This protection shall be made available on and after the date to be determined by the Secretary of Commerce, but not later than July 1, 1942, upon the payment of premiums. The protection [5] shall be applicable only, (1)—and I am quoting now—‘to such property situated in the United States, the Philippines, the Canal Zone, and the territories and possessions of the United States, and (2) to such property in transit between any points located in any of the foregoing’.”

For example, in our opinion “property in transit” between points or ports in the Hawaiian Islands and California, includes the “Lahaina,” there is no dispute the Lahaina was enroute here, as we submit, “in transit” between Hawaii and California at the time she was attacked and shelled by a Japanese submarine on December 11, 1942. Such protection was not to be applicable after this

above-mentioned date, that is, after July 1, 1942, to property in transit upon which the United States Maritime Commission was authorized to provide Marine War Risk Insurance. In other words, that exclusion was for the period after July 1, 1942.

Now, the above-mentioned or stated provisions looked primarily to the coverage by insurance policies or contracts that were issued on regular application and for which some premium charge or fee was made. This, of course, did not take care of the so-called "free" insurance that was originally announced within the few days after Pearl Harbor, that is, the public announcement that Mr. Jesse Jones made originally on December 13. But in the later section of the Act, which is subsection (b) of this Act, that coverage was picked up, and [6] to cover this free or non-premium insurance, Section B of this same Act was incorporated, and that Section provides briefly as follows: That any loss or damage to any—and now I am quoting—"such property," meaning real or personal property in the general definition of Section A, "sustained subsequent to December 6, 1941, and prior to the date mentioned above, to be determined by the Secretary of Commerce," which was actually July 1, 1942. In other words, for losses in that interim between Pearl Harbor and July 1, 1942, the provision was that the War Damage Corporation, or the owners of such property that has been lost, may be compensated by the War Damage Corporation without requiring—and I am quoting now—"a contract of insurance or payment of premium or other charge."

Now, it is the position of the Matson Navigation Company in this action that the statute is clear, clear on its face, and under its clear terms the Matson Navigation Company is entitled to recover. Those clear provisions, we submit, are as follows: First, the Act provides that all property in transit between American ports was afforded coverage without premium or policy for the period between December 6, 1941, and July 1, 1942.

The Court: But you said that this loss did not take place until December, 1942?

Mr. Henry: 1941, your Honor. [7]

The Court: You said a moment ago December, 1942, and that is why I was confused.

Mr. Henry: That was a slip of the tongue, and I wish to withdraw that.

The Court: This loss occurred immediately?

Mr. Henry: Four days after Pearl Harbor, that is correct. And, Second, the Lahaina was property "in transit" between Hawaii and California, and she was lost by enemy attack.

The Matson Navigation Company filed this claim with the War Damage Corporation on or about December 29, 1944, and this claim was denied by a letter from the War Damage Corporation, which reads as follows: It is attached as an exhibit to our Complaint, and there is no dispute as to the authenticity of the document. That is Exhibit A attached to our Complaint, and I will read it with your Honor's indulgence:

“War Damage Corporation
Washington 25,

January 19, 1945

“Mr. Melvin Price
Matson Navigation Company
215 Market Street
San Francisco 5, California
SS Lahaina

“Dear Mr. Price:

Acknowledgment is made of your letter of December 29, 1944.

The statutory provisions regarding property in transit [8] to which you refer are not interpreted by this Corporation as intended to have application to vessels, and, pursuant to authority contained in the Act, all vessels and water-craft other than (a) those used exclusively for storage, housing, manufacturing or generating power, (b) vessels while under construction, until delivery by the builder or sailing on delivery or trial trip, whichever shall first occur, and (c) pleasure water-craft while laid up afloat or ashore, have, with the approval of the Secretary of Commerce, been excluded from the protection authorized by the Act of March 27, 1942. It is, therefore, impossible for this Corporation to recognize the claim stated in your letter.

“Very truly yours,

M. W. KNARR,
Secretary.”

There is no dispute that he was the Secretary of the War Damage Corporation. The Court will note that that denial was made upon the basis that the Corporation had determined that vessels of the type of the Lahaina were not covered by reason of an exclusion from the protection which was stated to have been authorized by the Act of March 27, 1942.

Now, following the denial of this claim this action was brought and a number of affirmative defenses have been set up by the defendant, and in order to put before the Court in [9] rather brief fashion the issues of this case, I would like to summarize briefly those affirmative defenses:

The first affirmative defense is simply a general statement that the complaint fails to state a claim against the defendant; in effect, a general demurrer.

The second affirmative defense is that the Court is without jurisdiction because any remedy that the plaintiff has is restricted to an administrative action, if any. That is the language: "if any."

The third affirmative defense is that the Court is without jurisdiction because jurisdiction has not been granted to the District Courts.

These last two defenses that were restricted to an administrative remedy and the District Courts do not have jurisdiction is made in spite of the fact, your Honor, we submit it is quite clear, and it is admitted, that there is the statement in the statute and in the charter of the War Damage Corporation, that it has the power and is expressly given the power to sue and be sued in any Court of competent jurisdiction.

The fourth affirmative defense is somewhat inscrutable in my judgment. It simply states that the relief prayed for is improper and erroneous. Now, the relief that we pray for here, your Honor, is very simple. We are praying for a money judgment for the fair cash market value of the Lahaina, and that figure—I will submit stipulations in that regard—of the fair cash value of the Lahaina is not in dispute before your Honor. We have a stipulation as to what her fair cash market value was.

The fifth and sixth affirmative defenses may be considered together. Briefly, the defendant contends that certain regulations made applicable for the period subsequent or beginning with July 1, 1942, or more than six months after the loss of the Lahaina, and they are expressly made applicable for the period after July 1, 1942, at a time when premiums were charged and insurance policies were issued; that that set of regulations for the period after July 1, 1942, has the effect of excluding the plaintiff's claim.

The sixth affirmative defense, which is somewhat similar, is based upon a so-called order or resolution of the War Damage Corporation which was adopted, your Honor, on October 2, 1944, almost three years after the loss of the Lahaina, and under that resolution the defendants contend that the plaintiff's rights were wiped out, that there was and is no right of recovery because of a resolution adopted almost three years after the loss of the Lahaina.

The Court: Do you concede that there is under this statute authority on the part of the War Damage Corporation with the approval of the Secretary of Commerce to exclude?

Mr. Henry: Only under certain conditions, your Honor. [11] Primarily on the exclusion of territory—when we are speaking of losses within territorial limits of certain areas throughout the world, where there are losses in those territories, after control by the United States had—

The Court: I think you read to me the sentence that the War Damage Corporation may use its funds to provide protection against loss or damage to property, and so forth, which may result from enemy attack, with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable.

Mr. Henry: Yes, it is our contention that that authority does not extend to such a specific retroactive and not properly general exclusion where the conditions of the statute itself are clearly met, such as we have here.

The Court: Do you complain of the invalidity of this exclusion because of the fact that it is retroactive?

Mr. Henry: Retroactive plus the fact that it is an exclusion in violation and not within contemplation of the statute as a general exclusion, but it has a particular application to a particular type of property, and is therefore not properly within the contemplation of the Congress in providing for general exclusions.

The Court: The case really turns upon the validity of this so-called exclusion order?

Mr. Henry: We have ten affirmative defenses, your Honor. [12]

The Court: If that is a proper exclusion——

Mr. Henry: Then I think——

The Court: Provided these other grounds are not of sufficient merit to warrant consideration, that would be the determining issue, then?

Mr. Henry: That is an important issue, but in our judgment—and I think we can satisfy your Honor in the briefs on that—the exclusion that was made three years after the loss here, if permitted to be effective, would nullify the clear congressional intent, because they could pass a resolution excluding Diesel vessels, they could exclude steamships, they could exclude vessels under one thousand tons, but still include all vessels over ten thousand tons, or whatever it might be—in other words, within general statutory and administrative law there is a definite control over any such power to exclude where the intent of the Congress by the statute that has been adopted is clear. That is our position, your Honor.

The seventh affirmative defense, just briefly, asserts that since the United States Maritime Commission had some authorization to provide Marine War Risk insurance, the War Damage Corporation was prohibited from giving such coverage, and it is our position that the assertion of this defense completely ignores the provision of the statute that reads as follows in that connection: [13]

“Such protection shall not be applicable after the date determined by the Secretary of Commerce,”

which is July 1, 1942,

“to property ‘in transit’ upon which the United States Maritime Commission is authorized to provide Marine War Risk insurance.”

So that it is our position under the express terms of the statute this defense saying, that because the Maritime Commission may have had some authority to issue Marine War Risk insurance, that that condition under the statute could not be operative until July 1, 1942, and thereafter, that is, for losses and conditions arising after that. There is no dispute that that date, as I mentioned, that is referred to in the statute as determined by the Secretary of Commerce was July 1, 1942.

The eighth affirmative defense is a ground that since the statute provides that indemnity or compensation can be made during the so-called “free period,” that is, from December 6, 1941, to July 1, 1942, as though policies had been issued, and so forth, without the actual issuance of a policy, that the plaintiff in this action is barred because if a policy had been issued, then the policy would have contained a provision that suit should have been brought within twelve months after the issuance of the policy, but then we could not have gotten a policy according to the War Damage Corporation’s later determination, [14] and therefore we are to

be barred under the 12-month provision on a policy that even was not issued, but was unissuable under the subsequent resolution.

The ninth defense is similar to the one I just mentioned. The contention there is since the policies that they did issue for the premium period beginning after July 1, 1942, contain a provision for a certain type of formal claim that should be filed, and since we did not file that claim, even though we did not have a policy, we did not comply with the terms of a policy which in our opinion was certainly never issued, and in our opinion was unissuable under the then practice of the War Damage Corporation.

The tenth affirmative defense is based upon somewhat similar attempts, in our judgment, your Honor, to try retroactively or by some subsequent act of the War Damage Corporation to debar a plaintiff with a meritorious claim, which we believe ours is, but it is on such tenuous ground that I think I can describe it very briefly and point out what I mean when I say on tenuous ground. On December 30, 1942, there was a so-called press release—not a formal order, but a press release of the War Damage Corporation or Mr. Jesse Jones, which actually stated, and it is pleaded as an exhibit to the answer in this action, that losses for property “in transit,” and so forth, should be filed by February 1, 1943. In other words, this press release is dated December 30, 1942. It is [15] Exhibit D, your Honor, attached to the Answer. It is the last

exhibit. It should be filed with the Washington office of the War Damage Corporation on or before February 1, 1943. Now, that is only a press release, and while the Answer in this action pleads, with respect to that defense, that there was this resolution or public announcement, I should say, the answer states, on the last page of the answer, Page 10, that there was this public announcement stating that all claims for this free period of coverage of property "in transit" must be filed with the Washington Office of the War Damage Corporation on or before February 1, 1943, and then when we read the press release itself—it is only a press release on the thing—it states that they should be filed. Even if we should consider the press release as a binding order, I do not believe that a proper construction would be considered as a bar to an action. But there is the further point in that respect, your Honor—and that is one of the reasons why I read, so your Honor may have our views in mind at any rate, the text of the letter under which our claim was denied, the claim was not denied because we were late; it was denied because they had determined that vessels were not covered. So there is an elementary principle of insurance law and practice that where a claim is denied upon some specific ground like that, it amounts to a waiver of whatever formal technical grounds might exist on the thing. We believe the case is one to be determined [16] primarily on issues of law and what brief facts there are, from the standpoint of the presentation of the plaintiff's case,

or in support of the plaintiff's case, are covered largely by stipulation or admissions in the answer. I wish to offer at this time, if I may, a copy of the stipulations.

The Court: I take it there has been no case which has adjudicated this similar question?

Mr. Henry: No, there is not, your Honor.

The Court: Otherwise you probably would not be here.

Mr. Henry: The record will show later there have only been three claims for losses of hulls. One of those was the Union Oil Company case which was tried by a Jury before Judge Roche, but it went to the Jury on the simple factual issue of whether the tanker there was lost inside the 3-mile limit, and they did not come within this section of the statute that we are relying upon, namely, property "in transit," because that condition of the statute, or the condition of the statute there requires that the property must be "in transit" between American ports, whereas the Montebello, the Union Oil case, that went to the Jury on this factual question of whether it was lost inside the 3-mile limit or not——

The Court: Is that the case where they took the photographs under water?

Mr. Henry: That is right, but they could not come under the "in transit" provision, because the vessel was found from [17] California to British Columbia. It was not "in transit" between American ports. It did not present, as far as even determination by the Jury is concerned, the issues which

we have here, except it was allowed to go to the Jury on the assumption that there was a liability on the War Damage Corporation during this free insurance period if the factual conditions of that free insurance had been met.

The Court: Before you proceed, I wish to have a report from the Grand Jury.

The Court: You may proceed.

Mr. Henry: If the Court please, I would like to offer first the stipulation that the fair cash market value of the SS. Lahaina at the date of the loss in question was \$615,000. The stipulation contains a reservation by the defendant as to the relevancy of that item, but nevertheless there is no dispute that that was the fair market value in cash at that time.

Mr. Charles: If the Court please, the stipulation reserves our objection. I assume that the Court would not care to hear argument at the present time with respect to the nature of our objection.

The Court: I assume from what has been said that that goes to the merits of the question of the right to sustain any claim, doesn't it? Your point would be the same whether [18] this was \$615,000 or \$10?

Mr. Charles: Yes, your Honor, but in addition to going to the merits of the action itself, the objection is more precise. The statute refers to reasonable compensation, and our objection is that the market value cannot be fixed by the Court because the statute gives the authority to the administrative agency, the War Damage Corporation, to determine

what is a reasonable compensation, and that determination has been made with respect to other types of property that the corporation deems covered by the Act. The legislative history shows that the legislators considered, and the proponents of the bill considered that the reasonable compensation might be 75 per cent of the value or it might be some other standard, and in some cases, as our testimony will show, a limit has been set with respect to jewelry, for example, of \$1,000. No claims above \$1,000 have been recognized at all. That is the nature of the objection, but I think we can, if the Court wishes, argue the matter more fully later.

The Court: Suppose a claim were presented to the War Damage Corporation and it was rejected on some other ground other than the question of the amount involved, and assuming the right to proceed in court; then is the essence of your objection, under those circumstances, all the Court would be empowered to do would be to say that they have a claim but the Court would not have the power to fix the amount of claim, or [19] it would have to refer it, let us say, back to the Corporation with directions for it to fix the amount?

Mr. Charles: Yes, although our objection is more fundamental than that. We construe the statute to leave to the administrative agency alone the recognition of any rights which claimants may have. This statute does not create a right of action in claimants.

The Court: That is covered in one of the defenses that you have made, that there is no jurisdiction in the Court to hear the matter.

Mr. Charles: That is correct, your Honor.

The Court: I suppose we could save all those points and present them.

Mr. Charles: I suggest we reserve our objection.

The Court: The stipulation may then be admitted subject to the objections you have made in court.

Mr. Henry: They are stated in the stipulation, your Honor.

The Court: The Court will reserve decision on those objections until such time as the case is decided.

Mr. Charles: Thank you.

Mr. Henry: The second stipulation, if I may, your Honor, is the stipulation that at the time of the loss of the Lahaina the plaintiff had no war risk insurance of any kind on the vessel—no war risk insurance, except the term “War Risk [20] Insurance” is not to be considered as stating that the plaintiff under this stipulation had no war risk insurance from the defendant in this action.

Mr. Charles: If the Court please, we make the objection to that, not to the stipulation, but we make the objection as to the evidence offered by the stipulation that it is irrelevant and immaterial and does not bear on any of the issues of the case.

The Court: Do you wish those objections reserved under the same conditions as in the case of the former stipulation?

Mr. Charles: Yes, if the Court please.

Mr. Henry: Then I would like to offer the deposition of Captain Hans Matthiesen, who was

the master of the Lahaina at the time. The fundamental issue is not in dispute at all. It will be stipulated the Lahaina was lost by enemy attack, but the detail is in there if it should be interesting to the Court, at any rate, of the circumstances of the loss; so we do offer that deposition.

The Court: Is the reading of that waived?

Mr. Henry: The reading of that, as I understand, can be waived, is that correct, Mr. Charles?

Mr. Charles: Yes.

Mr. Henry: Then I would ask Counsel on a matter that I discussed previously if Counsel will stipulate with me that we refer in briefs and the Court may consider it being in [21] evidence the Panama Canal Rules of the Road, as appearing in Farwell, a private publication, "Farwell's Rules of the Road," published originally in 1939 and again in 1944, or whatever the date was, and that is agreeable.

Mr. Charles: Yes, that is agreeable, your Honor. Counsel may refer to Farwell. We, of course, reserve our objection of immateriality.

Mr. Henry: Yes, but there won't be any objection to the authenticity of the reference.

Mr. Charles: Not at all.

The Court: Counsel, is this proceeding today going to be transcribed?

Mr. Henry: I think we will arrange for that, yes, your Honor.

The Court: I am not making any point that you should do it, but if you are going to have it

transcribed I would not need to make as much a record as I intended to take of it.

Mr. Henry: Yes.

Mr. Charles: We have asked Mr. Sweeney for copies.

The Court: What was the Captain's name?

Mr. Henry: Matthiesen. And then one further stipulation that I have also discussed with Mr. Charles, that they will make no objection to the authenticity of the so-called Union Contract that I am about to present as merely an example, according to our position, of the common usage of the term "transit" or "Transiting," and particularly, and so that there may be convenient reference to it in the record, I would like to read Section 29 of this printed contract, which is dated to expire on September 30, 1941, between various steamship companies and the National Maritime Union of America. Section 29 I am quoting now:

"Transiting canals: When transiting canals such as the Panama, Manchester, and so forth, men on their watch below who are required on deck for the purpose of handling lines, or standing by winches, etc., shall be paid the regular rate of overtime. On Saturday afternoons, Sundays and holidays, overtime shall be paid all men required on deck standing by winches or handling lines."

There will be argument before your Honor, I am certain, from the opposing counsel that the words or phrase "in transit" is not clear and that therefore

they are entitled to resort to extraneous sources and attempt to give a different meaning from that which we consider to be the clear, common and popular meaning of that phrase, and this is offered at this time somewhat in anticipation, simply as an example of a general and popular usage of the phrase.

Mr. Charles: If the Court please, may we have the same objection?

The Court: Very well.

The Clerk: Are you offering this? [23]

Mr. Henry: Yes, I would like to offer that. I have a number of other union contracts here where a similar phrase appears. I wonder, to save cluttering the record, whether you would be willing to stipulate that there are a number of union contracts where the same or substantially the same phrases appear?

Mr. Charles: We would have no objection to reference being made in Counsel's brief. I assume those references go to transiting the Canal.

Mr. Henry: Yes, the use of the word "transit."

Mr. Charles: It is not used excepting in those union contracts in connection with transiting the Canal.

Mr. Henry: Yes. I think possibly, unless your Honor has some questions at this time, that that will be sufficient to present the basic issues as we see them and to cover the factual issues so far as there may be any factual issues in this case from the plaintiff's standpoint.

(The union contracts in question were there-upon received in evidence and marked Plaintiff's Exhibit 1.)

Mr. Charles: If the Court please, the War Damage Corporation is owned by the Reconstruction Finance Corporation and is a Government agency. However, the RFC has used private counsel, which is the occasion of our appearing here and not the United States Attorney. Mr. Henry has made a very fair and able statement of the background of this suit, and while [24] we do not agree with the conclusions, I would like to state briefly what our defenses are as we see them. I would like also to refer, in order that the Court may have a clear picture of the problem, somewhat further to the background of this statute under which the suit has been brought, and the references which I make, which might appear to the Court to be outside the record, are embraced within the legislative history, and if I go beyond that Counsel will correct me.

The legislative history shows, and your Honor will remember, that shortly after Pearl Harbor people, particularly in San Francisco and on the West Coast and on the East Coast, looked at their fire insurance policies, thinking of the possibility of air raids and were alarmed to find that there was an exclusion with respect to war risk, and when they went to their brokers they found out that war risk insurance on their homes and farms, crops, was not available, that it was a form of insurance that was not written. The resulting agitation was such that, as Mr. Henry stated, Mr. Jones went to the President and they arranged for the creation of the War Insurance Corporation, the name being

changed later to War Damage Corporation, and that corporation was created to provide war risk insurance. Immediately after the creation of the Corporation a press release was issued by Mr. Jones which stated that for the time being everybody in the continental United States would be covered for war damage. And [25] they excluded certain types of property, such as curios, antiques, jewelry—my enumeration may be inaccurate—and then that press release was further amplified and coverage given by the press release was amplified by another press announcement which stated that in addition to the coverage provided for by the original press release, the coverage would be extended to property destroyed or lost by enemy attack in possessions of the United States, and both releases stated that additional terms and conditions would be announced, and that for the time being no premiums would be required.

The War Insurance Corporation was formed under Section 5(d) of the RFC Act, and that is the section under which the Defense Supplies Corporation, the Metal Reserves Corporation, and many of these other war agencies were created. There was a provision and there is a provision in Section (d) which provides that the RFC may create these corporations for the purpose of aiding the war effort, and it was thought by the RFC officials that they had the authority under that section to embark on this new scheme of war risk protection. It was not feasible at first to charge any premium.

Then in January, 1942, they went to Congress with a bill which provided that the RFC was directed to supply additional funds to War Damage Corporation. The bill did not include any reference to any marine coverage whatsoever. The bill was amended in the Senate during the hearings to include the [26] language, "property in transit." The background of it was this: If course, in our prior wars we had not had the same problem. The bombing damage was something new in World War II. Marine war risk insurance had been available for years and years; in between wars the insurance was available. It is available and is a common matter now, and because of the possibility of marine war risk insurance rates being too high or the commercial market being insufficient, we had a statutory program in which the Maritime Commission was given the authority to write war risk insurance upon hulls of ships and upon cargo.

There were certain limitations in that statute. One of the limitations was that the Maritime Commission could not insure cargo carried on foreign hulls, and when the War Damage Corporation statute was presented to the Houses and the hearings, which were quite extensive, commenced on that bill, the only persons who appeared, almost the only persons who appeared, other than the RFC officials, were the delegate from Hawaii and the delegate from Alaska, and they induced Congress to introduce in the bill an amendment covering "property in transit." They said that while the Maritime Commission had authority to issue war risk insur-

ance, and while they conceded the undersirability of having two agencies of Congress, two agencies of the Government doing the same thing, yet people in Hawaii were having a hard time getting [27] and paying for war risk insurance, which was then issued only in the commercial market. The Maritime Commission could not supply that, not insofar as cargo on foreign hulls was concerned, and there were foreign ships, such as the Norwegian ships and those of other allies, carrying cargo between the United States and Honolulu. They said that the Islands and Alaska were in a rather unique position because they depended upon shipments from the mainland for almost everything they had—food, clothing, and many other goods—and they were having to pay, they said, very high marine insurance, war risk rates.

So this amendment was introduced into the statute, and as we will show in our briefing, it is quite apparent from the hearings at the time this amendment was adopted that they were talking not about ships, but they were talking about cargo, personal effects, and other types of personal property that would be carried in ships and carried in planes, that they were not thinking of the hulls of ships.

The Maritime Commission at the time, we will show, had full authority to insure all American ships with war risk insurance. The commercial market was operating. A great many owners had their war risk insurance before Pearl Harbor, and a great many of them had it after Pearl Harbor. It is our position that ships were not within the scope and purview of this statute. [28]

The whole pattern of war risk insurance was this: there was the marine insurance provided by the Maritime Commission. There was the insurance for service men, war risk insurance provided by a certain act. And then when Pearl Harbor came along there was this new need, which was provided for by this War Damage Corporation statute, the first part of which, and the principal part of which set up an insurance scheme for the issuance of policies, the payment of premiums and particularly provided that the Corporation should cover only certain types of risks. The statutory provisions upon which the plaintiffs are relying is the second part of that statute, the section of the statute, which was an approval of the War Damage Corporation compensating certain types of property which they had not excluded from the protection of the Act until July 1, 1942, on a free or gratuitous basis, and that was in effect a backing up of what had already been done by War Damage Corporation and by this press announcement, a rather unique governmental order, to be sure, but with some authority in Section 5(d) of the RFC Act to justify it.

We take the position that there is no right of action created for the benefit of claimants by this Section 5(d) of the RFC Act, the War Damage Corporation statute. It is true that the sovereign immunity defense which would otherwise lie has been waived by the charter of the Corporation itself, which states that the Corporation may sue and be sued, a very [29] reasonable provision in view of the fact that the Corporation was going to be

issuing policies, and persons who had policies and had paid for those policies should certainly have a right to sue the Government. But the statute itself, as we see it, is an appropriation statute for the purpose of addition additional funds and setting the limitation upon which this additional billion dollars would be authorized by the United States. It states in its title that it is a financing statute. It is a statute, as was noted in the legislative history, which places limitations upon the use of the funds, but it was not an authorization measure. That is particularly clear from the language which the plaintiff must rely upon to find any right of recovery, and that is the fact that under Subdivision (b), which covers the free protection provision of the Act, the language is permissive and not mandatory. The Court will note a very careful selection of the words "shall" and "may" in Subdivision (a) of the Act.

The Court: Would that argument apply in the case of where the War Damage Corporation had actually issued a policy of insurance?

Mr. Charles: No, it would not, if the Court please, because Subdivision (a) applies to the insurance policy program, and there is not that same choice of words as appears in Subdivision (b).

The Court: In other words, when the War Damage Corporation [30] got paid for issuing the policy it could be sued, but where it gave the policy for nothing, it could not be sued.

Mr. Charles: That is right, with this limitation that, of course, if the War Damage Corporation should arbitrarily and capriciously refuse the payment of a claim that was clearly due to the plaintiff—for example, if you and I own buildings across the street and they were damaged in enemy attack and you were paid and I was not paid, the authorities, of course, hold that the action of the agency of the Government could be corrected by a proceeding in the nature of mandamus, where the action of the Corporation was capricious.

The Court: Then there would be jurisdiction in the Court, wouldn't there?

Mr. Charles: There is always jurisdiction in the Court independently of this statute.

The Court: You are thinking now in terms of the general power of the Court to restrain or to correct abuses of administrative or executive authority?

Mr. Charles: That is correct.

The Court: And you say that would be the only basis for jurisdiction in a case where there was a refusal of the War Damage Corporation to compensate under that provision (b) of the statute?

Mr. Charles: Yes, your Honor, that is correct. Subdivision (b) employs language which is clearly permissive, when [31] it says, "Subject to the authorizations and limitations prescribed in Subdivision (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of

Commerce under Subdivision (a) may be compensated;" and the legislative history likewise bears that out.

The reason for it, I think, is this: Congress was presented with the fact that the War Damage Corporation was already a going concern; that, as Mr. Jones stated to both Houses, "We have already a hundred million dollar policy outstanding for people in this country for loss and damage by enemy attack," and they were in effect in this statute, not creating rights in claimants, but authorizing the agency to disburse additional sums of money on the basis of a plan set out in the statute. No express right to a court appears in the Act itself.

As your Honor noted, it is quite clear that the War Damage Corporation was given the powers to exclude types of property from the coverage of the statute.

The Court: Before you leave that now—I do not want to detract you from your argument, but in case it is necessary for me to follow any evidence in the matter, I would like to get that point clear in my mind. Under that clause (b) it is your contention that there being no absolute obligation under the statute on the part of the Corporation to compensate [32] for a loss during this six months period as if there were a policy issued, and therefore the only way any complaint of anyone who claimed the benefit of that section against the War Damage Corporation could be heard in court would be if there were the type of action on the part of

the War Damage Corporation that would amount to an arbitrary excess of power. I am not trying to put the words in your mouth, but I am trying to find out——

Mr. Charles: You are expressing it better than I was able to and, of course; there is nothing unusual in that. Congress, if it chooses, may grant a right and make an administrative remedy a sole remedy. Congress may grant a right and give a legal right of enforcement. Congress may give a right and provide that the legal right is exclusive or the administrative remedy is exclusive. And there are many instances in which no remedy is given whatsoever, except the administrative remedy which lies in the discretion of the Agency, and can only be corrected for abuse of discretion. This was dealing with a gratuity which the War Damage Corporation had purported to hold open to everyone in the country, and it is understandable that Congress might say, as they did here, "You are undertaking this. All right. You may compensate for the types of property that you cover. You may make this compensation and we will give you the additional funds to do it, without affording a right of action to sue [33] on claims under that Subdivision (b)."

The statute expressly provided that the Corporation should have the power to except from the coverage of the Act. I am now referring to Subdivision (a) specifically—exclude from coverage of the Act different types of property. The press release, when it had been initially announced, included the

exception of certain types of property and stated that other terms and conditions might be announced. The bill as it was originally presented did not have any provision for general exceptions, but the proponents of the bill pointed out that they expected all the details of the coverage to be left to the War Damage Corporation, and this general exception provision was included in Subdivision (a) and is provided likewise for in Subdivision (b) in the over all program by the words "subject to the authorization and limitations prescribed in Subdivision (a)."

Now, the Corporation, notwithstanding the fact that it believed that ships were not embraced within the purview of the statute, and notwithstanding the fact that it believed that the term "property in transit" did not include ships, in order to clarify the question, provided specifically that ships and a great many other types of property should be excluded, and a resolution was passed on October 2, 1944, for the purpose, as the minutes which we will introduce in evidence will show, of clarifying the prior position of the Corporation, the consistent position of the Corporation, that ships were [34] excluded from the coverage of the Act.

Now, the point was made by opposing counsel that there might be a question as to the validity of the exclusion due to the fact that it was retroactive, but the answer, your Honor, to that is that the statute itself is retroactive insofar as any claim here would be covered. The statute was not passed until April, 1942. Plaintiff's loss occurred on December

12, 1941, and the Act necessarily contemplated, insofar as the free protection, insofar as the claims which had already accrued are concerned, that the exceptions would be retroactive. The power of the Corporation to make exceptions would go back to December 6, 1941.

We have also raised as a defense the press announcement Mr. Henry referred to, in which all claims for property "in transit" were directed to be filed with the Corporation by February, 1944. That was issued for publication. There was no provision in the statute for any statute of limitations, because it was not contemplated that anyone received any right to sue under the statute. They could sue under the policy. They had no right to sue otherwise. There was no provision at all. The Government agency was advised that the problem arose of how were we going to give people notice that they must get their claims on file? They did it by the issuance of a press release to the newspapers, to the press agencies, which said that claims should be filed prior to this date. [35]

At that time no claim had been received from Matson Navigation Company. This suit was not on file. The Corporation therefore has taken the position, as we have pled in our answer, that the claim is barred by time.

Now, we have some depositions which we wish to introduce in evidence. Our depositions in addition to covering the resolution of the Corporation which excludes losses of this type and other types, cover the administration of the Act under the ex-

isting W.D.C. law. The Courts in the construction of a statute—and this problem is one primarily of statutory construction—will give great weight to the construction of a statute that has been made by the administrative agency charged with the administration of it, and that is particularly so where the agency has been instrumental in the drafting and introduction of the statute itself.

The Court: Are these in the form of rulings in particular matters?

Mr. Charles: Yes, your Honor. It largely deals with the claims administration of the statute and the property that has been excluded.

The Court: In other words, they are just not merely argumentative statements of officials.

Mr. Charles: It will cover what has been done, and Counsel will have objections.

Mr. Henry: We will contend a large part of it, as [36] your Honor has commented.

The Court: I have had the question raised so many times concerning the OPA law as to what constituted an administrative interpretation, and I think most of the Courts hold that those interpretations had to be concrete, in the sense that before the Court would give them weight they had to be directed toward a set of facts in order to see whether or not from a judicial point of view they had relevancy to the matter the Court had under consideration and, secondly, if they were made by a person who had authority to make the interpretation. I haven't any idea what is in the deposition. I am just trying to find out the nature of it.

Mr. Charles: I think the requirements your Honor mentioned will be met by a large part of it, if not the whole of it.

The Court: Do you intend to read those depositions or is that a matter the Court can read when it considers the whole case?

Mr. Charles: I think it can be done either way, your Honor. We had planned, and I think Mr. Henry had contemplated that the depositions be read here and that the objections be urged at the time.

The Court: There are objections?

Mr. Henry: Yes, your Honor.

Mr. Charles: However, in view of your Honor's familiarity, [37] your Honor might prefer——

The Court: If there are objections that are made I think perhaps we had better dispose of them. It is too difficult to dispose of them afterward.

Mr. Charles: I think we are both prepared to argue them.

The other question deals with the phrase "property in transit." It is our position, as shown by the legislative history, those words were not intended to include anything but cargo, personal effects, currency, and things that could be carried, and the statute being an insurance statute, we wish to offer testimony and we have taken depositions bearing on the meaning of the words "property in transit" as understood in the marine insurance business, and with your Honor's permission at this time we will proceed with the introduction of our testimony.

The Court: The plaintiff has put on, so far as the facts are concerned, everything it needs?

Mr. Henry: That is right, only possible refutation, if any, which would come up by way of rebuttal.

ALFRED B. KNOWLES

called as a witness on behalf of the defendant; and being first duly sworn, testified as follows:

The Clerk: State your name to the Court.

A. Alfred B. Knowles. [38]

Direct Examination

By Mr. Charles:

Q. Mr. Knowles, could you tell us, please, what your present occupation and position is?

A. I am President of A. B. Knowles and Company, a corporation, United States and Canadian Marine General Agents for the Utah Home Fire Insurance Company of Salt Lake City, Utah; Pacific Coast General Agents for the Marine Department of the Millers National Insurance Company of Chicago, and British Columbia Marine General Agents for the London Scottish Insurance Corporation of England; and my corporation also acts in the capacity of Fire Insurance General Agents on the Pacific Coast for the Utah Home Fire Insurance Company.

Q. Is the work of your firm principally, however, marine insurance?

A. Principally marine insurance.

(Testimony of Alfred B. Knowles.)

Q. Could you tell us how long you have been in the marine insurance business?

A. I have been in the insurance business since 1915 and directly connected with marine insurance since 1919.

Q. May I ask you, Mr. Knowles, as to any other associations that you have had in the marine insurance business?

A. I have been on the board of directors of the Board of Marine Underwriters of San Francisco. I have held the position as President of the Board for two years. I am a member of the Average Adjusters' Association of the United States [39] and am a member of the various committees of the Board of Marine Underwriters at the present time.

Q. Since 1919 your business has been principally marine insurance, is that correct?

A. Principally marine insurance.

Q. Can you state where the principal marine insurance centers are in the United States?

A. In the United States the principal marine insurance centers are in New York and San Francisco.

Q. Are you familiar, Mr. Knowles, with the practices and usages in the marine insurance business? A. I am.

Q. Are you familiar with policy forms that are used in the marine insurance business?

Mr. Henry: Just a moment. I would like to introduce an objection here to any further testimony. I can see from the preliminary questions

(Testimony of Alfred B. Knowles.)

it is shaping up to where they are going to the point where an attempt is being made to obtain from this witness a statutory meaning to be given or a meaning to be given to a statute, and it is an attempt to invade the province of the Court. It is incompetent, irrelevant and immaterial, and has no bearing on the issues in this case; it is particularly an attempt to create ambiguity in the statute, which is clear on its face, not only from the legislative history of the statute. The purpose of any outside testimony like this is not to create ambiguities, and that is the only purpose that it seems to me any such testimony as this could be offered for: an attempt to create an ambiguity.

The Court: There is no jury sitting here. What do you intend to show by this witness?

Mr. Charles: We intend to show, your Honor, that in this statute, which is in effect an insurance statute, the language which was employed has a definite meaning in the insurance business, which limits it to a certain type of property as distinguished from a ship or a vehicle.

The Court: What particular language do you refer to?

Mr. Charles: We refer to the language "property in transit."

The Court: You want this witness to state what in his experience as an insurance man the term "property in transit" means to those who are engaged in the insurance business?

(Testimony of Alfred B. Knowles.)

Mr. Charles: Yes, in what connection the words "property in transit" would be employed. I would like to cite authority on that, your Honor. I am prepared to point out the relevancy and admissibility of the testimony.

The Court: Wouldn't it be more in the interest of time if the witness testifies and you make a motion to strike the testimony, and if that testimony is important and vital in the determination of the legal question involved, we [41] could give more time to it than just arguing it preliminarily now?

Mr. Henry: Very well, if that is your Honor's pleasure. I shall not repeat my objection, and it will be assumed, Mr. Charles, to be running to this entire line of questioning.

The Court: You have heard what his offer is.

Mr. Henry: Yes.

The Court: And you object to that on whatever grounds you wish to?

Mr. Henry: Yes. If I may repeat that, your Honor, so it will be perfectly clear in the record, I object on the ground it is incompetent, irrelevant and immaterial, having no bearing on the issues in this case, no proper foundation has been laid to show that Congress was acting as an insurance company, the members of Congress, when they wrote a simple statute here; that this witness cannot invade the proper province of the Court of interpreting the legislative enactments such as we have here. It is solely a question for the Court as to the meaning of this language, and not to permit

(Testimony of Alfred B. Knowles.)

testimony, a further objection, just to emphasize, not to recognize testimony that might be some conceivable device serve to try to create an ambiguity, in a statute which we consider is perfectly clear.

The Court: Inasmuch as I cannot tell at this moment how vital this is going to be to the determination of the legal [42] question, I think it would be better in the interest of justice to permit the witness to testify. I can see it cannot be very lengthy testimony. Then Counsel can make a motion to strike it out. I will reserve ruling on that and consider how vital it is. It may be if it were stricken out, for example, there would not be anything left in the defendant's case. I can't tell at this time.

Mr. Henry: Thank you, your Honor.

The Court: I will overrule the objection and Counsel can make a motion to strike after the testimony is in, and your objection may run to the entire testimony.

Mr. Henry: That is agreeable.

Mr. Charles: I can assure your Honor and opposing counsel that this is not a groundless offer. We have precise, well established authority, we believe, that covers the situation we have been discussing.

Q. (By Mr. Charles): Mr. Knowles, are you familiar with the terminology which is used by the marine insurance industry? A. Yes, I am.

Q. And your familiarity has gone back quite a number of years, has it?

A. A number of years.

(Testimony of Alfred B. Knowles.)

Q. Can you tell us whether the terms "in transit" are employed in the marine insurance business? A. Yes, they are. [43]

Q. Can you tell us in what connection and with what meaning the terms "in transit" are employed?

Mr. Henry: I object to that as calling for the conclusion of the witness, what the meaning is. That is not a proper question. The witness can state factually what his experience is, but not what the meaning is.

The Court: I think that does call for the conclusion of the witness. I think he may state in what respects that term is used. I think your question is subject to the objection and I will sustain it to that extent. I think you can reframe it.

Q. (By Mr. Charles): Can you tell us, Mr. Knowles, in what connection the terms "in transit" are employed in the marine insurance business?

A. The term "in transit" is applied to property which is being transported, namely, carried between points either by rail, by water, by airplane or other means of conveyance. It has to do with the property that is carried by some means of a carrying vehicle.

Q. Are those terms employed, Mr. Knowles, in connection with a vehicle or carrier or ship?

A. In our marine insurance business they are never employed with respect to the carrying vehicle, either ship or railroad car, as applied to a marine insurance policy.

(Testimony of Alfred B. Knowles.)

Q. Can you tell us whether the terms are found in any standard [44] marine insurance policies as a regular thing?

Mr. Henry: What terms?

Mr. Charles: The term "in transit."

The Witness: Yes, they are. They are found in various types of policies under which we cover merchandise, goods, that are actually "in transit" by a carrying vehicle; for example, on shipments moving by railroad cars we have one type of policy which is known as a "trip transit policy," covering a trip of merchandise, or a transit of merchandise by rail or motor truck between two certain points, and that is one type of policy, more or less standard. And we have also a cargo policy which covers shipments by water, various forms of cargo policies, and in those policies there is a phraseology which has to do with the property which is being carried and is described as being in the ordinary course of transit or "in transit" by a certain mode of vehicles or boats, ships.

Q. Do you find the term "in transit" used in ocean policies on ships? A. No.

Q. Mr. Knowles, how are ships insured—by that I mean, are they insured while they are en route from place to place, are they insured on a time basis, or how?

A. Generally speaking, ocean-going vessels are insured on a time basis, on an annual basis. On the other hand, during the [45] war and in writing war

(Testimony of Alfred B. Knowles.)

risk insurance, vessels were insured for shorter periods of time, usually three months, if a time limit was involved, or sometimes on a voyage basis between two points.

Q. And if they were insured on a voyage basis, how would that be phrased?

A. It would be phrased at and from San Francisco to the Hawaiian Islands and on her return voyage for not exceeding so many days in all, or not exceeding three months. Generally speaking, there was some time limit at which the return voyage should be completed.

Q. Have you ever seen the voyage described in any policy of marine or war risk insurance utilizing the terms "in transit" from, say, Honolulu to San Francisco?

A. I have never seen the words "in transit" used in connection with a policy on a ship except where a boat may be loaded on board another boat for transportation from one place to another, such as a small pleasure craft, as is very often done, shipped from the east coast to the west coast, where the small pleasure craft can be carried on deck. We would term that as being "in transit," because she is being transported, that is, being carried from one place to another.

Q. Would it be fair to state, then, that the phrase "property in transit" would never mean a ship to a man in the marine insurance business?

Mr. Henry: Just a moment. I am going to

(Testimony of Alfred B. Knowles.)

object to the question as leading and suggestive and calling for the conclusion of the witness, and again an attempt to invade the province of the Court beyond anything that was originally stated by Mr. Charles to be within the scope of his stated testimony.

Mr. Charles: If the Court please, I think this man's background is such that we are entitled to ask an opinion question with respect to the meaning which would be attributed to phrases.

The Court: You are offering this testimony as that of an expert in the field?

Mr. Charles: Yes.

The Court: Read the question.

(Question read.)

The Court: I will overrule the objection.

The Witness: No, it would never mean a ship moving under her own power from one place to another.

Mr. Charles: Thank you. That is all.

The Court: I think perhaps we had better take the noon recess now. We will reconvene at two o'clock.

(Thereupon a recess was taken until 2:00 o'clock p.m.) [47]

Afternoon Session, April 30, 1947

2:00 o'Clock P.M.

ALFRED B. KNOWLES

recalled for the defendant;

Mr. Charles: If the Court please, we had just concluded the direct examination of Mr. Knowles.

Cross-Examination

By Mr. Henry:

Q. Mr. Knowles, I believe that you mentioned that ordinarily vessels are insured under marine insurance policies on a time basis; that is the customary practice, is that correct?

A. That is correct.

Q. So there is no occasion in any policy of that type to refer to the vessel being en route or "in transit" between any fixed termini, is that true?

A. Yes, that is true.

Q. In the somewhat rare instances that you mentioned of voyage hull policies, they are confined to the movement of the vessel between certain fixed termini, is that correct?

A. That is right.

Q. And that is defined as the extent of the coverage, is that true?

A. Yes.

Q. From one point to another point, is that right?

A. From one point to another point. [48]

Q. So that if in such a policy the language of the policy read, "to cover while the vessel is 'in transit' from Aukini, Hawaii to San Francisco,

(Testimony of Alfred B. Knowles.)

California," there would be no doubt in your mind as to the coverage of such a policy, would there?

A. If the policy were drawn that way, yes.

Q. It would be perfectly clear to you that it meant to cover for the time that the vessel was en route from Aukini to San Francisco, is that right?

A. That is right.

Q. I assume that you agree that a vessel is property, is that not true, Mr. Knowles?

Mr. Charles: I object to the question on the ground it is too general. It does not indicate whether the question means that the vessel be described as property in the marine insurance business or is it property in some other statute, or is it property in the general layman's view, or property in Webster's Dictionary. I think the question is objectionable until it is more definite.

The Court: Isn't that a matter that the Court could take judicial notice of?

Mr. Henry: I think that is true, your Honor, yes.

Q. But taking up Mr. Charles' suggestion, there is no question, is there, in your mind, Mr. Knowles, that in connection with marine insurance a vessel is to be considered as property? [49]

A. Well, it is not described as property in our marine insurance parlance. It is described as a hull.

Q. And only as a hull?

A. A hull and machinery and appurtenances, where we are insuring it under a hull policy.

(Testimony of Alfred B. Knowles.)

Q. And you never use the word "property" in a hull policy?

A. We would never describe the hull alone as property.

Q. Let us see. You mentioned hull, machinery and appurtenances. All of those together, hull, machinery and appurtenances, are property, isn't that right?

Mr. Charles: I object to the question on the ground it is argumentative.

The Court: It seems to me both the lawyers and the Judge are better qualified to answer that question than the witness.

Q. (By Mr. Henry): But the word "property" is never used in hull marine policies? A. No.

Q. I will read you the following clause, which I am reading from "American Hulls, Pacific Form of 1938," and ask you whether you agree that this is a correct statement of a common clause appearing in marine hull policies:

"In the event of expenditure for salvage—salvage charges are under the sue and labor clause—this policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value less loss and/or damage, if any, for which the underwriters are liable bears to the value of the salvaged property."

Isn't that a standard provision?

A. That is right. That is a standard provision.

(Testimony of Alfred B. Knowles.)

Q. So you would wish to modify your answer?

A. I will to that extent.

Q. I believe you mentioned, Mr. Knowles, that in connection with rail transportation there was merchandise that you ordinarily covered by insurance and that on ocean or marine carriage that there was cargo. It is a fact, isn't it, that both merchandise and cargo would in your opinion be an all-inclusive description of not only merchandise and goods, but of the vessel or railroad car as well?

A. May I have that question again?

(Question read.)

Mr. Charles: I object to the question. I do not think it is understandable.

The Court: It is not quite clear to me. Maybe the witness understands it.

Mr. Henry: If the witness understands it, I will leave it on that basis.

The Witness: I am sorry to admit I do not quite understand it.

Mr. Henry: I will withdraw the question. [51]

Q. Now, Mr. Knowles, you did not participate in any of the committee hearings on the floor of the House of Representatives or the Senate in connection with the preparation or drafting or consideration of this so-called War Damage Corporation Act, did you? A. No.

Q. Is the word "property" used in what you describe as marine cargo policies?

A. Well, I can't say offhand whether the word "property" is actually used.

(Testimony of Alfred B. Knowles.)

Q. Ordinarily you would use the word “merchandise or goods”?

A. “Merchandise or cargo.”

Q. Or “goods,” is that right?

A. Or “goods.”

Mr. Henry: I think that is all.

Mr. Charles: That is all.

The Court: That is all.

FRED GALBREATH

called as a witness on behalf of the defendant; and being first duly sworn, testified as follows:

The Clerk: State your name to the Court?

A. Fred Galbreath.

Direct Examination

By Mr. Charles:

Q. Mr. Galbreath, in what business are you?

A. Marine insurance business.

Q. Could you state what your position or occupation in the industry is?

A. For the last fifteen or sixteen years I have been Pacific Manager of the Marine Office of America.

Q. Does that office do any underwriting of marine insurance? A. Yes.

Q. And is that the principal business of the Marine Office of America?

A. It is the principal business.

(Testimony of Fred Galbreath.)

Q. Can you tell us where the principal centers of the marine insurance underwriting business in the United States are located?

A. San Francisco and New York.

Q. Is your office the principal office on the west coast of your company?

A. It is one of the largest offices on the west coast and one of the largest in New York also.

Q. Do you do inland marine as well as ocean marine? A. Yes, sir.

Q. Do you handle any war risk insurance?

A. Yes, sir.

Q. Do you handle any cargo insurance?

A. That is the major portion of our business.

Q. Do you handle any hull insurance? [53]

A. Yes, we do.

Q. About how long have you been in the marine insurance business?

A. Twenty-seven or twenty-eight years.

Q. Have you a general familiarity with the practices and usages in the business?

A. I have.

Q. Are you familiar with the usage of marine insurance terms? A. Yes.

Mr. Henry: May I interrupt here out of an abundance of caution, your Honor, to say that the same objection runs to this line of testimony and is subject to the motion to strike that finally will be made on behalf of the plaintiff in this action as was mentioned in connection with Mr. Knowles' testimony?

(Testimony of Fred Galbreath.)

The Court: I assume this witness is an expert along the same or similar lines as Mr. Knowles.

Mr. Charles: That is correct, your Honor.

The Court: Very well. You may have an objection to this line of testimony, the same as the objection you urged before, and we will reach the matter in the same way as in the case of Mr. Knowles.

Mr. Henry: Thank you.

Q. (By Mr. Charles): Mr. Galbreath, have you or your company has any relationship or association with the Board of Marine [54] Underwriters of San Francisco?

A. Yes, I have served as a director on the Board.

Q. What is the general function of the Board of Marine Underwriters?

A. The general function of the Board is to make it possible for underwriters to organize various committees dealing with insurable matters, drafting of clauses and similar factors pertaining to our business.

Q. And that is a business rather than merely an honorary or club organization?

A. Oh, it is strictly a technical organization.

Q. And it employs surveyors and the principal underwriters belong to it, do they?

A. Yes, practically all the San Francisco market belongs to it.

Q. Have you been associated with any organization dealing in foreign trade, Mr. Galbreath?

A. Other than the Board?

Q. Other than the Board?

(Testimony of Fred Galbreath.)

A. I am affiliated with several organizations in San Francisco, including the Chamber of Commerce; President of the World Trade Association of the San Francisco Chamber and on various committees, both executive committees and organization committees.

Q. Are you familiar with policy forms used in marine insurance? [55] A. Yes, sir.

Q. Can you tell us whether those forms are to any extent standardized?

A. Practically all of the major clauses in marine insurance policies are standardized, both in the New York, San Francisco and London markets.

Q. Can you tell us whether property "in transit" is insured in marine policies?

A. Will you repeat that?

Q. Can you state whether or not property "in transit" is the subject of marine insurance?

A. In ocean cargo policies property is insured "in transit." The phrase "in transit" appears in the ocean cargo policies, and particularly in one clause which we call the "warehouse-to-warehouse" clause. The phrase is used to describe the commencement of the transit, and the phraseology in particular is "due course of transit."

Q. Is it utilized in any policies other than the general cargo policy?

A. It is utilized in our so-called "inland marine" policies, which are apart from ocean cargo policies.

(Testimony of Fred Galbreath.)

Q. And could you explain in what connection the term "in transit" is used in the inland marine policies?

A. For cargo or merchandise which is being transported by a carrier. For instance, if merchandise is moving by truck or [56] railroad car, it is commonly referred to as being "in transit," and our "trip transit" policies are built around that coverage.

Q. Are the terms "in transit" used in connection with the insurance of the hull of the ship?

A. No.

Q. Would your answer be the same whether the insurance were marine hull or war risk?

A. Yes, my answer would be the same.

Q. Can you state that positively, Mr. Galbreath, or is that a matter for judgment?

A. In all my experience I have never seen the phrase "in transit" used in any type of hull coverage, either war or marine hull.

Q. Have you ever seen the words "property in transit" used together?

A. On hull coverage?

Q. No, on any coverage.

A. I have seen it used in inland marine coverage. The word "property" could be used on ocean cargo policies. I have never seen it used in any hull policies at all, either inland or marine.

Q. You have never seen the word "property" used in the insurance clause as the subject of insurance in a hull policy?

(Testimony of Fred Galbreath.)

A. It is never used as the description of any hull. Under a [57] hull policy the word "hull" is used, and that is qualified, or, rather, broken down to describe the various features of the vessel, such as hull, tackle, apparel, furniture, machinery, and that is further broken down in the machinery end by saying "boilers machinery," and so forth and so on. But the word "property" is never used in the phraseology of describing the interest of an insured under a hull policy.

Q. Is it sometimes used in connection with a cargo policy? A. It is sometimes so used.

Q. Can you tell us, Mr. Galbreath, how a trip or journey is described in a hull policy?

A. At and from a certain point to a certain point.

Q. Hulls are insured, are they not, both under voyage policies and time policies?

A. The majority are insured under time and in special instances there are voyage policies.

Q. Would you say a voyage policy was an anachronism or is it something that is not infrequently found?

A. It is not common, but we do run across them every once in a while on a particular risk, where only a voyage policy would fit the picture. That is normally used where a venture pertains to a voyage. It is not a regular trade. If you wish me to elaborate, we have instances today before us where we have tugs going to the Orient, not to

(Testimony of Fred Galbreath.)

return. Therefore the hull insurance on those tugs or whatever vessel is going out is [58] only insured on that voyage basis. It would be customary, if it were going to be a regular trade pursued for months or years, to handle it on an annual basis and not on a voyage basis.

Q. In other words, would "in transit" be used to describe such a voyage to the Orient?

A. No.

Q. Referring to a cargo type of policy, are the words "in transit" used to describe the voyage, that is, the sea voyage?

A. No, they are not.

Q. Could you explain your answer?

A. The words "in transit," when used in an ocean cargo policy, are more or less a description of the time of attachment and course of the insurance. In other words, the words "in transit" are used in clauses which do not describe the particular voyage, but do describe the coverage under the policy. The voyage is always particularly shown in an ocean cargo policy reading by a certain vessel from and at, I think is the phraseology, we will say, San Francisco to a destination. And that is the way the voyage is typed into an ocean cargo policy.

The phraseology "in transit" or "in due course of transit" is in the insuring clauses or the body clauses of the policy showing the extent of the coverage. Other than that the policy is in effect

(Testimony of Fred Galbreath.)

during due course of transit, but the voyage is particularly described at and from San Francisco to its destination.

Q. Have you ever seen a policy where the words "in transit" were used in connection with any conveyance when operating under its own power?

A. I have not.

Q. Has this use of the words "in transit" that you speak of been in existence for any period of time, or is it recent?

A. It has been in existence during all my history in the business and long prior thereto.

Q. Is it reasonably widely known, or is it terminology that is applied only in certain instances?

A. The phraseology "in transit" is an integral part of the "warehouse-to-warehouse" clause, which is known all over the world as uniform wording.

Mr. Charles: That is all.

Cross-Examination

By Mr. Henry:

Q. Mr. Galbreath, you mentioned that in the policies that you are familiar with the particular place that the phrase "in transit" appears is in the warehouse-to-warehouse clause with some universal application, is that right?

A. Ocean cargo policies.

Q. Ocean cargo policies, yes. Isn't it a fact, Mr. Galbreath, that the purpose of that clause and the use of the phrase "in transit" is to extend what

(Testimony of Fred Galbreath.)

would ordinarily be the coverage under the basic form of ocean cargo policy so that it [60] covers a period of time when the merchandise is actually not in the course of transit, in the sense of movement, but is for purposes of the policy, even though at rest considered to be still subject to the coverage of the policy?

A. The only way I can answer that—I believe I understand your question.

Q. Would you try to answer it, Mr. Galbreath?

A. The words “in due course of transit” were inserted into an ocean cargo policy to amplify the “warehouse-to-warehouse” clause so that in the event there was an undue delay ashore, there would not be coverage under a marine policy. If once the cargo was loaded on the vessel, the words “in due course of transit” would of course not necessarily appear in the policy at all.

Q. That is right.

A. So therefore the words “in due course of transit” must arise solely because of coverage ashore. Therefore the words “in due course of transit” are coupled with a shore coverage, and not a vessel coverage.

Q. And they primarily cover a situation where the property, the merchandise or cargo that you have described, has come to rest physically rather than at a time when it is in the course of actual movement?

A. No, sir.

Q. Then it is a time prior to loading aboard and after discharge [61] from the vessel; in the “ware-

(Testimony of Fred Galbreath.)

house-to-warehouse" clause, Mr. Galbreath, I am referring to?

A. Yes. "In due course of transit" arose from the necessity of showing that property was covered ashore and under due course of transit while ashore.

Q. Before the actual ocean carriage commenced and after the actual ocean carriage ceased, is that right? A. That is right.

Q. So that if one were attempting to cover property while it was on the high seas and in movement between ocean ports, you would in customary practice not use the term "in transit" to cover that period of time, would you? A. You may.

Q. I am talking now about customary practice. That is not the connection in which you would use the phrase "in transit"?

A. That is correct.

Q. In other words, as you mentioned before, it applies primarily to shore risks as contrasted with ocean risks? A. That is right.

Q. Do you know of any ocean marine policy that covers marine risks for both property afloat and fixed structures ashore?

A. Would you mind repeating that?

Q. Yes. I might not have made myself clear.

A. I do not understand that.

(Question read.) [62]

A. Under one policy?

Q. Yes. A. No, I do not.

(Testimony of Fred Galbreath.)

Q. Now, this inland marine insurance that you refer to is entirely independent of and has no direct connection with ocean marine insurance?

A. That is correct.

Q. And that is in a large sense a fictitious term, in the sense that you describe it as being inland marine, but in a large majority of the cases it hasn't even any reference to water, is that right?

A. It could be more aptly described as transportation.

Q. Let us say in covering inland marine insurance, you cover with a personal property floater policy?

A. That is right.

Q. That has no reference to transportation?

A. When I speak of inland marine insurance, I was speaking of the use of the phraseology "in transit, and therefore I was only speaking of that type of policy where there is land transportation.

Q. But that would refer to the actual land movement and have no reference at all to the ocean?

A. It would refer to merchandise in transit, in the custody of some type of a carrier.

Q. It is a fact, isn't it, in your general cargo policies, [63] the customary reference to the property insured is cargo merchandise, is that correct, or goods?

A. Well, as a matter of fact, when you describe the interest insured you normally say 230 cases of canned goods.

(Testimony of Fred Galbreath.)

Q. That is what I mean. You do not use the word "property" in describing it?

A. Unless you have a long series of articles, in which you would say, "on the following property," and then you would describe the following property, if it is various types of merchandise, not all the same kind.

Q. In other words, where you want to be all-inclusive, you use the term "property," is that right? A. Yes.

Q. And the same thing is true, is it not, in connection with hull insurance: As you mentioned, it is broken down between hull, machinery and appurtenances, and then even some further breakdowns in that, is that correct?

A. Yes, but the word "property" is not used.

Q. Never in connection with an all-inclusive description of the subject-matter of the insurance?

A. It is never used in connection with the description of the insuring interest on the face of the policy.

Q. But on occasions or in instances there is reference in hull policies to the word "property," where the entire vessel, that is, the vessel, the hull, the machinery, appurtenances, [64] and so forth are referred to?

A. In the Sue and Labor Clause the word "property" is used in two places. In the first instance the word "property" is used that the owner has permission to sue and labor, and so forth; and

(Testimony of Fred Galbreath.)

in the second place it is used not as a description of the vessel but of the entire property, which would include cargoes. That is why they use the word "property" in that second instance.

Q. But in the first instance they are referring to the vessel, machinery and appurtenances as contrasted with any cargo?

A. And perhaps freight, too. I think it refers to interests of the shipowner, no matter what they are.

Q. And that is the general subject-matter of the policy, isn't that right?

A. The general subject-matter of the policy is on the hull and equipment, and those interests which are insured. The hull policy would not include freight.

Q. Unless you specifically mentioned it, isn't that right?

A. No, freight would not be included under that particular hull policy. Freight is——

Q. An intangible, isn't it?

A. An intangible.

Q. And something that the vessel owner has to specifically arrange for?

A. Under a separate policy.

Q. The use of the word "property" under the standard hull [65] policy is not for the purpose of either including or excluding coverage on freight, is that true? A. That is correct.

(Testimony of Fred Galbreath.)

Q. Does the ordinary hull voyage policy, which you say is issued on occasion, cover for any period of time when the vessel is not actually en route or moving?

A. That would depend upon the risk and what the particular underwriter wished to do.

Q. If the language that you mentioned in the opening part of the policy was, as far as cargo insurance is concerned, at and from a certain point to a certain other point—is that correct?

A. That is correct.

Q. So the “at” would cover a period of time when the vessel was not actually moving, is that correct?

A. If it was on a voyage, the voyage would commence at a port at the instant it started to move.

Q. It has to start to move, is that it?

A. Yes.

Q. Then it ceases when the vessel arrives at the port of destination, is that right?

A. Usually an underwriter will have the phraseology of “until moored in good safety,” or for 48 hours or 72 hours after being moored in good safety, some such qualification.

Q. But if there is a time period beyond the actual mooring, [66] then such a policy would cover for the period of time when the vessel was not actually moving or “in transit,” is that right?

A. In accordance with the phraseology contained in the policy.

(Testimony of Fred Galbreath.)

Q. Incidentally, Mr. Galbreath, you did not consult with or were not consulted with or did not advise the committee, or either committee in Congress, or any of the Members of Congress, with regard to this legislation, did you?

A. They did not see fit to call on me.

Mr. Henry: That is all.

Redirect Examination

By Mr. Charles:

Q. Mr. Galbreath, is inland marine insurance applied at all to the coastwise movement by water?

A. On the East Coast they have a type of inland marine policy which does cover coastwise movements of cargo. It is a trip transit policy extended to cover ocean cargo coastwise.

Q. When you speak of a "trip transit policy," can you tell us whether that terminology is ever applied to anything other than goods and things carried? A. It is not.

Q. On your cross-examination I was not quite sure what you said, whether the words "in transit" were used merely to extend the policy from the port to the warehouse, or whether the phrase was really intended to cover during the entire voyage from the warehouse on one side to the warehouse on the other.

A. The clause in which that phrase "in transit" appears is [67] one which appears is one which covers the merchandise insured, from the time it

(Testimony of Fred Galbreath.)

leaves the place, the warehouse, place of manufacture—the warehouse at port of shipment or place of shipment to the warehouse at destination. Therefore it must necessarily cover the entire venture. The words “in transit” are phrased for inland coverages, as in an inland marine policy, and they cover the transit on land likewise. But the phrase is in the whole journey, from one end to the other, in that warehouse-to-warehouse clause.

Q. And it is utilized in the ocean cargo policies?

A. It is, the warehouse-to-warehouse clause. It is likewise used in the marine extension clause, which for the past several years has been an integral part of an ocean marine policy. It is in those two clauses that the phrase “in transit” appears.

Mr. Charles: That is all.

The Court: That is all.

Mr. Charles: If the Court please, we have on this subject four depositions which we took in New York of four insurance men, three of them marine insurance men, and one a man familiar with railroad insurance, and in view of the fact that this testimony is largely cumulative, although important, I might suggest to the court that in the interest of time we might offer the depositions with the understanding that the same objections would be reserved. The objections for the most part are expressed in the deposition, but in case they are not we would be agreeable to the same understand-

ing we had with respect to the witness' testimony in court. I think that might save some time that way.

The Court: Is that agreeable to you?

Mr. Henry: That is agreeable, your Honor. The only thing I want to be doubly certain about, both from the standpoint of opposing counsel's thoughts in the matter and primarily the court's thoughts in the matter, is the time which would be appropriate to make a motion to strike. Of course, I can make the motion to strike right now, but I assume it would be the pleasure of the court to let that phase of the case go on. I am prepared to make such a motion right now.

The Court: Before you make the motion, let the depositions of these four men, Inselman, Pease, Cann and Wayne, be admitted and deemed read, subject to the same objections that you made in the case of the testimony of Knowles and Galbreath.

Mr. Henry: Yes.

The Court: Then it may be admitted under those conditions.

Mr. Henry: Yes.

The Court: Will that constitute your testimony of the expert witnesses on this matter of the meaning of these words, "in transit"?

Mr. Charles: That is complete, your Honor.

The Court: Now, I think you might, for the sake of the record, make your motion.

Mr. Henry: Thank you, your Honor. I wish to make a motion, and do move to strike the testimony

of Mr. Knowles and Mr. Galbreath, and the testimony of Mr. Inselman, Mr. Pease, Mr. Cann and Mr. Wayne, the last four being under deposition, for the reasons stated in the objections to the testimony of Mr. Knowles and Mr. Galbreath; that the testimony is without proper foundation, there is no showing that these witnesses or that Congress, itself, had any consultation or advised with these people; that it is an attempt to invade the province of the court to construe what we consider to be the clear language of the statute; that it is self-serving; that it is a matter not within any of the issues of this case and, as I mentioned before, an attempt to invade the province of the court and an attempt to create an ambiguity where there is none on the face of the statute.

The Court: The upshot of the testimony of these witnesses is merely that as to the language contained in the policies, with which they are familiar, policies of marine insurance, and the fact that certain terms are not included in insurance policies in their field of knowledge and experience; so that the witnesses have really testified to what insurance policies contain and what they do not contain under certain conditions. Assuming the court were or were not to consider that testimony [70] in resolving this issue, wouldn't whatever you have to say go to the weight of that testimony rather than to any question of admissibility? Is it worth anything, granted that it is so, is it worth anything or not in resolving the main question?

Mr. Henry: In large part that is true, your Honor, except since it so clearly in our opinion has no weight, that it is irrelevant, and that it has no bearing in the solution of the issues in this case.

The Court: I suppose if the testimony has no weight at all, it might come into the category of immaterial or incompetent testimony, for that reason. All the witnesses have testified to what is in and what is not in an insurance policy. Whether those facts have a bearing on or were taken into account by the framers of this legislation or by those interpreting the legislation, by making administrative rulings and the like, might be a different question. I do not know. I think perhaps we might leave the matter in reserve until I really see if it has relevancy. If it has no relevancy in the long run to the main issue, then it should go out; if not formally, at least it will not be considered by the court in arriving at a decision. But it would seem to me better to wait until the whole matter is presented and see whether it is so vital that, whether it goes in or out, will have a bearing on the decision. Then I think I ought to weigh it. I think it is best for the court to reserve ruling on it, and then you can [71] make whatever comment you want on the briefs.

Mr. Charles: I would like briefly, if I may, to reply to the question as to the admissibility of this line of testimony without arguing the case. I would like to say it is our view that the testimony is somewhat broader than what your Honor mentioned. It

seems to us that we have established throughout by the witnesses and through the depositions that the words "in transit" have a very definite meaning in the marine insurance business; that it was used in connection with insurance on goods, and never in connection with insurance on vehicles, and it is true the direct testimony has been with respect to usages and policies, but, after all, that is the way in which the insurance people do business. But I would venture to say, if your Honor ever asked any insurance man whether "in transit" ever applied to ships, he would say, "You are crazy," simply because through its usages in policies it has acquired a very definite insurance conception, and it is for that reason that we offer it in connection with the construction of the statute, in support of the legislative history, which shows that when the amendment was suggested the men who asked that the amendment go in were considering the insurance only of goods and cargoes and merchandise, and it is almost inconceivable. If I may argue——

The Court: I do not want to interrupt you, Mr. Charles, but I understand the point you are making. However, I think [72] probably your opponent would agree with you that this matter that has been testified to is probably quite true so far as the general insurance field is concerned, but the question we have to consider is the impact of that upon the issue in this case. I am not prejudging that in any way. That is why I suggested that we reserve that, and inasmuch as both sides seem to consider that of importance, argue that in the brief.

Mr. Charles: Let me just briefly say the rule is expressed in most authorities that where a statute relates to a particular phase of a business or profession and terms are utilized in the statute, that evidence is admissible to show what meaning the terms have in the business, and the courts will go this far: The courts will say, "You may have certain words which have a general meaning of one kind, but when it is used in a statute which deals with a particular business, such as the insurance business—and we have such cases—that the meaning of the words in that business are the words to be applied."

Our Ninth Circuit Court of Appeals, in a fairly recent case, applied that rule. The question arose under a statute as to what was the meaning of carbonated beverages, and the testimony showed that generally beer was considered a carbonated beverage, so defined generally in dictionaries. But expert testimony was put on to the effect that "carbonated beverages" as used in the business did not include beer. [73]

And similarly, in insurance statutes we find the same rule applied. We find the cases also which permit the testimony as to the meaning of terms as distinguished from what might be deemed to be usage, which might not require quite the same foundation, such as in a New York case in which the question arose on a contract policy as to the meaning of the words "port risk," and there testimony was admitted by the court. So the courts have

laid a great deal of weight on the testimony of experts in the business as to what phrases are used, and, after all, this was an insurance statute. Congress was giving powers, giving money to a corporation known as the War Insurance Corporation originally. Its sole purpose was the issuance of insurance and this free protection.

Mr. Henry: Under the suggestion of the Court, we are merely reserving any comment.

The Court: I think this matter you are discussing is really a part of the main issue of the case, itself, and I am not going to decide the case, itself, under any condition on a motion to strike.

Mr. Charles: If the Court please, our next testimony deals with the administrative interpretations of the Act and includes the deposition of the Secretary of the War Damage Corporation, through whom we will offer the resolution of the corporation which excludes ships from the coverage of the Act, among other things, and in view of the several subjects [74] that are covered by the deposition and the objections that counsel has made and will make to them, I think it would be desirable to read this deposition.

The Court: Very well.

Mr. Charles: Your Honor, will it be agreeable to have Mr. Ransom read the answers?

The Court: Any way you wish to proceed. I have found that until you get to a point that is critical or reaches an objection, sometimes the attorneys can state the substance of it quicker; but

whichever suits your convenience in best presenting what you have in mind will be satisfactory as far as the court is concerned.

Mr. Charles: If the court approves, I will follow your suggestion.

The Court: Is there any copy available that I could follow?

Mr. Henry: Mr. Charles, I will read from my copy as against your answers.

Mr. Charles: If the Court please, this first deposition is that of the Secretary of the War Damage Corporation, Mr. Knarr. The first questions are preliminary, until we get to page 3, where the question is asked Mr. Knarr about the eighth line as to whether any regulations have been passed by the War Damage Corporation, and he says, "Yes, Regulations A on the general program," and then we have offered in evidence a copy of Regulation A, which I believe is attached to the deposition, [75] to the original deposition which your Honor has.

Mr. Henry: Exhibit 1 For Identification.

The Court: Exhibit 1 to the deposition is the same as the exhibit attached to your answer?

Mr. Charles: That is correct.

The Court: That is the regulations effective July 1, 1942.

Mr. Charles: That is true, and the regulations, as counsel's objections show, state expressly that they are effective July 1, 1942. They apply to the general program, and as our later resolution shows, they were used as a guide in the disposition of the claims.

The Court: Do you object to this?

Mr. Henry: Yes, I object to that on the ground the regulations, by their own terms, state that they are effective July 1, 1942; that they could not by their own terms be applicable between December 6, 1941, and July 1, 1942; that the Act, itself, expressly provides that this insurance program under which policies are issued and premiums are charged was to go into effect on a date determined by the Secretary of Commerce, which is July 1, 1942. All of those regulations refer to policies to be issued in the future, and it is our position that on the face of the exhibit, itself, with the offered exhibit, itself, they could not apply with any force at all to the situation existing before July 1, 1942.

Mr. Charles: The answer to that, if the Court please, is [76] found in another exhibit attached to the deposition, which are the minutes of the meeting of the executive committee on October 2, 1944, at which time the resolution expressly applicable to the free protection was passed, and which I would like to read, after omitting a preliminary statement of who was present at the meeting. Mr. Claussen was present——

Mr. Henry: Just a moment. I am not certain that I understand this. You are now talking about another exhibit, Mr. Charles, and my objection, of course, went to the particular exhibit No. 1 For Identification, which was for the period subsequent to July 1, 1942, and where policies were actually issued and premiums actually paid, and that hasn't any application to the period under B of the War Damage Corporation Act.

Incidentally, your Honor, I think I neglected to point out in the consideration of the War Damage Corporation Act, itself, in (b), the opening statement is:

“Subject to the authorizations and limitations prescribed in subsection (a).”

There is no express grant in subdivision (b) of a power to exclude for the free period.

The Court: Your point is that the statute gives the War Damage Corporation the right to limit the coverage after July 1, 1942.

Mr. Henry: That is right. [77]

The Court: But it has no power to exclude anything from coverage during the period prior?

Mr. Henry: That is correct, your Honor, under the language of the statute.

The Court: Your interpretation of the statute is that everything was covered, that there was no way by which the War Damage Corporation could exclude anything?

Mr. Charles: Assuming that the property fell within the statutory description of the property that was subject to coverage.

The Court: The only description in subdivision (b) is to any such property.

Mr. Henry: That is right, and that goes back to all real and personal property in the United States and its possessions and in transit between ports in the United States and its possessions, your Honor.

Mr. Charles: I must take exception to that.

The Court: But the corporation was given power to make exclusions, wasn't it?

Mr. Henry: After July 1, 1942, your Honor.

Mr. Charles: I do not want to argue the matter, your Honor.

The Court: I just wanted to get this clear. Your contention is that anybody who had any kind of property, real or personal, within the areas or in the places fixed in this statute [78] in the first six months' period was protected under the statute?

Mr. Henry: Yes, your Honor.

The Court: And that no personal or real property of any kind could be excluded in that six-months' period.

Mr. Henry: Subject to the terms as to what property was covered in the statute, itself.

The Court: But according to your contention all real and personal property which was in certain places was covered in this six-months' period.

Mr. Henry: And property "in transit" between those ports.

The Court: And property "in transit" between those ports.

Mr. Henry: Yes.

The Court: Was covered under that provision.

Mr. Henry: That is correct, your Honor.

The Court: And that the corporation had no power to exclude anything for that first six-months' period?

Mr. Henry: Yes, and in the alternative, our position is that they had no power, even assum-

ing there was any power to exclude there; the attempt to exclude in the fashion they did was not available to them.

The Court: You are talking about the retroactive phase of it?

Mr. Henry: The retroactive phase of it, and the fact that this was not, even assuming there was authority for general exclusions prior to July 1, 1942, this kind of exclusion that they made was not a general exclusion within the terms [79] of the statute. I just want to make it clear that I am relying on both grounds.

The Court: I would offhand think you had kind of a heavy burden to carry there in urging that by this statute, which under subdivision (b), referring to the same property, providing that injured parties may be compensated during the six months' period following the war for that same property, the property referred to in subdivision (a), that that was intended to give greater rights to the persons who might be damaged than to those who subsequently took out insurance and paid premiums for it.

Mr. Henry: In this respect, to show your Honor what I have in mind there: After July 1, 1942, it was on a straight contract basis, where the applicant could apply for insurance and the War Damage Corporation could grant insurance under the general terms that might be set up. In other words, the parties were contracting there for specific things. It was a proposal, let us say, from the stand-

point of acceptance by the corporation, whereas you had during this period from December 6th to July 1st, 1942, a situation where the great mass of the people, of course, did not know all the details of what might be involved here, and acting on the basis of equality, you might say, the Congress, in our judgment, very wisely provided that there was this war coverage. Mind you, that date could have been cut off to an earlier date than [80] July 1, 1942. It could be any date between the date of the Act, March 27, 1942, and July 1, 1942. So that you do not have the situation where there was a blanket commitment that could run on, first of all, for any appreciable time and was not subject to reasonable control, and they all knew substantially what happened up to March 27, 1942. So there wasn't any blind commitment by the Government in that respect.

The Court: I can see we could get into perhaps considerable argument on this subject. It brings out what the contentions are by discussing it, somewhat. Perhaps we had better let the argument go until later. I think I shall allow these various documents to go in evidence, particularly this exhibit. I think if I exclude any one of these exhibits, then I haven't before me the clay with which to work. I am not going to work in the dark, and if we were to argue this matter now as to the admissibility of it, we are more or less determining the case because some of the relevant material may be left out.

Mr. Henry: I just wanted to be certain my objection was registered, your Honor.

The Court: Very well, you have your objection in the record. I will admit Exhibit 1 in evidence, Defendant's Exhibit 1 in the deposition of Mr. Knarr.

Mr. Charles: Secretary of the War Damage Corporation. Following that there are two amendments to the regulation (a), neither of which are pertinent to the particular problem which [81] we are considering here.

The Court: One effective July 1 and one effective October 1, is that right?

Mr. Charles: That is correct.

The Court: Exhibits 2 and 3.

Mr. Charles: Yes, and the approval of the Secretary of Commerce to the regulations (a) and the Amendments——

The Court: Do you wish them in evidence?

Mr. Charles: The Secretary has stated that they were approved by the Secretary of Commerce.

The Court: I do not know what the weight of them is, and how important they are. I will give them such weight as they are entitled to, depending upon their relevancy. They may be admitted. I do not think the Clerk need mark them. What we have said I think covers the matter. They are admitted in evidence as part of the deposition of the witness Knarr.

Mr. Charles: Page 10. We offer in evidence the Resolution of October 2, 1944.

Mr. Henry: That expressly refers to the free protection provided for by subdivision (b) of the statute.

The Court: Subject to the objection that has been made as to its competency and relevancy and the other legal objections that have been urged, it may be admitted as a part of the deposition.

Mr. Charles: Now, in addition, on page 11, I should like to offer also, your Honor, the minutes of the Executive Committee, [82] War Damage Corporation, October 2, 1944, in which this resolution appears, the minutes of the meeting referring to the reasons for the passage of the resolution, and I believe a photostatic copy is attached to the original deposition.

The Court: Isn't that what we just admitted?

Mr. Henry: That is what I thought.

The Court: You were referring only to the resolution that is contained in these minutes?

Mr. Charles: I thought we offered the resolutions separately. Page 10 appears to indicate that.

The Court: You want the whole minutes of the meeting to go in?

Mr. Charles: That is correct.

The Court: Subject to the same objection they may be admitted.

Mr. Henry: Thank you, your Honor. I just wanted to call the court's attention to the fact that these minutes show that the immediate or prompting cause for the adoption of that resolution on October 2, 1944, as appears in the minutes, was

because they had received a claim for the Union Oil tanker, which is something of rather amazing significance to me to adopt a resolution when they receive a claim, which has the effect of eliminating any coverage for vessels.

Mr. Charles: Your Honor, I must protest counsel's statement, and in view of the impression which it may have [83] made on your Honor I would like at this time briefly to read the very resolution to which counsel refers. It is true that the matter of the claim of the Union Oil Company was one of the motivating factors, but the resolution was a great deal broader and more important than that, and it so expressed.

Mr. Henry: I think I may have given you the wrong impression, and I hope I did not give the court that impression. I was not talking about the text of the resolution, itself. I was calling attention to the minutes and the language in the minutes that immediately preceding the resolution that was offered——

Mr. Charles: If the Court please, I am again going to protest that because as the document shows and states, Mr. Klossner, President, suggested that, "Before beginning the investigation of the principal group of claims for which the corporation is charged with responsibility (i.e., those arising in the Philippine area), it may be advisable to consolidate and clarify the corporation's record with respect to the protection extended in connection with losses occurring before July 1,

1942. Mr. Klossner called the attention of the Directors to the following matters: That on December 13th and December 22nd, 1941, the Board of Directors of this corporation approved two press releases of the Federal Loan Administrator which announced that reasonable protection would be provided by this corporation with respect to loss of or damage to property resulting from [84] enemy attack, and expressly excluded from such protection certain classes of property."

Then they go on to say in the next paragraph that Regulations A have provided exclusions and that those have been used as a guide with respect to the free protection, and then the statement to which counsel refers, and only then:

"Mr. Klossner stated that a question recently had been raised by a claimant as to whether this corporation might be under legal obligation to make compensation for the hulls, equipment and cargoes of vessels lost by enemy attack," and so forth.

That was not the plaintiff's claim. It was the Union Oil claim, the plaintiff's claim not having been filed up to that time. But the resolution was a great deal broader, as the court will see. It excluded great numbers of types of property, only one of which appears on page 216—

The Court: I think I will have to read that more carefully at the time of the submission.

Mr. Charles: On page 11 we have offered in evidence—I do not have a copy of it here—the public announcement.

The Court: That is attached as Exhibit 5 to the deposition, is it not?

Mr. Charles: Yes.

The Court: That is the press release you referred to.

Mr. Charles: That is the press release which directed [85] the filing of claims by February 1, 1943, and our defense is based upon the fact that this claim was not filed by Matson until after that date.

Mr. Henry: I would like to make a particular objection to that, your Honor, on the basis that it is incompetent, irrelevant, and immaterial; that by the terms of the press release, itself, assuming you have conditions laid down binding on parties by a mere press release, they do not amount to any bar to the plaintiff's rights in this matter. The press release simply says that claims should be filed by February 1, 1943, and it is our contention, your Honor, that that cannot operate as a bar, and there is no showing at all that it has any bearing at all on the issues in this case under any proper consideration.

Mr. Charles: If the Court please, we have, as mentioned this morning, a rather unique situation——

The Court: I think I recall what you said on that. Subject to the objection that has been made I will allow the exhibit to be marked and considered in evidence.

Mr. Charles: In that connection we should like also to offer in evidence a stipulation, a written stip-

ulation to the effect that a statement of the substance, but in different language, of this announcement was published in the New York Journal of Commerce on December 31, 1942, and there is attached hereto a photographic copy of the Journal of Commerce of that day. The objections are reserved in the stipulation. [86] The stipulation further covers the fact that three subscriptions to the Journal of Commerce were taken by Matson Navigation Company at that time. The subscriptions were sent to three addresses: At 215 Market, one at 30 Rockefeller Place, and a third at 913 Southern Building, Washington, D. C., and a fourth at 480 Main Street, San Francisco. We will offer that with the understanding, of course, that counsel's objections are reserved.

Mr. Henry: It seems to me we are reaching a point on this one where it would not be inappropriate to ask for a ruling. Here is a private unofficial publication that contains a news item that is not in the language, even, of the present release, and that certainly seems to me to be a particularly wild thing to consider that that would establish a statute of limitations, self-concocted, if I can put it that way, without any invidious intent upon the War Damage Corporation, a self-concocted statute of limitations without any authorization in the statute, and the fact that it appeared in a paper in different language from the press release, itself.

Mr. Charles: I would like to say in answer to that we have here not a case where the Government

has had a contractual relationship with another party, as would be the case with a policy written by the Maritime Commission, or one written by War Damage Corporation, where such a notice would be clearly insufficient. Counsel's objections would be pertinent. The [87] fact here, however, is that the Government has indicated a willingness to pay certain types of free compensation. They do not know who the claimants are. They have no way of communicating with these claimants. It is not like the situation where notice could be posted on real property. The notice is not the type of notice to be posted in the Federal Register, and the corporation, as the testimony shows in Mr. Knarr's deposition, did this: They issued this press announcement, and they issued it to the press representatives in Washington. Of course, they could not control what use was made of it and what use was not made of it. We have used the Journal of Commerce in which this appears as it was a publication in one of the principal cities, and which is given general circulation, as indicated by the fact that the Matson has subscribed to it. But this Government agency is not going to be able to rely on a statute terminating the filing of claims. Therefore, that administrative agency has got to sometime decide that the claim should not be considered because of laches, because it is late, and every reason that would exist in the case of an insurance company exists in the case of the Government, and it seems to me that any reasonable notice, for which the publication is offered, was about all they could do, and in view of the fact that

this claim was filed so long after Pearl Harbor, and so long after the Matson Navigation Company must have known their ship was lost, that the action taken by the administrative [88] agency, to whom this power and authority has been given, seems to me very reasonable.

The Court: Do you urge that there is any statute of limitations at all?

Mr. Henry: Oh, there is the statute of limitations; in California it is the three-year statute, and we are not barred by that statute of limitations in actions arising under this statute. I mean there is no statute of limitations under the War Damage Corporation Act, and I think Mr. Charles recognizes that, himself, in the language of the Act, itself. There are statutes of limitations that apply to the bringing of actions, yes.

The Court: This case was filed——

Mr. Henry: It was filed in time. There is no contention, your Honor, that there was any statute of limitations in the ordinary legal sense of the word that would in any way bar us.

The Court: You filed your case within about three years of the date the statute would run.

Mr. Henry: That is right.

The Court: The statute was enacted——

Mr. Henry: March 27, 1942.

The Court: And you filed the action on March 22nd, 1945.

Mr. Henry: That is correct.

The Court: You are of the view the California law applies? [89]

Mr. Henry: I think that is correct, your Honor. There is no contention we are barred by any statute of limitations in this action, unless there is a statute of limitations in a sense by some press release, or something like that, where the War Damage Corporation tried to bar claims by some press release.

The Court: Whether this statement by the War Damage Corporation was operative or not, at least I would have to have it before me to decide whether it was operative or not.

Mr. Henry: I guess it goes the same way as the others.

The Court: I think so. You say I ought to make a ruling on it.

Mr. Henry: I am talking now about this private publication.

The Court: I would not be particularly disturbed about making a ruling on it. After I have considered the case I might want to change it.

Mr. Henry: I think you have the actual press release. What I was objecting to primarily before your Honor now was the introduction of this private publication, to clutter the record, in a sense, which is not even in the language of the press release appearing in an unofficial publication as having any probative value to the issues of this case.

The Court: I think perhaps counsel's purpose is to show that the corporation came to the conclusion to do this, and it [90] endeavored in some manner to reach the public in connection with that. I think that probably is what counsel has in mind. I think

I would have to know what was done in order to see what the legal effect of it was. It may have no legal effect. On the other hand, it may have some. I do not think it unduly clutters the record. I will overrule the objection under the stipulation.

Mr. Charles: I think, your Honor, that that covers all the exhibits that are referred to in the depositions of Mr. Wayne and Mr. Goodale.

The next deposition is that of R. C. Goodale, who is the General Counsel of War Damage Corporation, and in charge of the handling of claims for the corporation.

The Court: What page is that on?

Mr. Charles: That appears on page 28.

The Court: I have it. I think we will take a short recess.

(Recess.)

Mr. Henry: If the Court please, I spoke to Mr. Charles during the recess and he was agreeable, if it was agreeable to your Honor, that I call two very brief witnesses. It will be somewhat out of order, just to get them on and off the stand, if I may, before we proceed with Mr. Goodale's deposition.

The Court: Yes. [91]

THERON L. PRENTISS

called as a witness on behalf of Plaintiff in Rebuttal, and being first duly sworn, testified as follows:

Q. (By Mr. Henry): Mr. Prentiss, I will ask you a few leading questions and try to shorten this.

(Testimony of Theron L. Prentiss.)

You are employed by the insurance brokerage firm of Marsh & McLennan, are you?

A. That is correct.

Q. That is one of the largest firms in the United States, is that right? A. Yes.

Q. For how long have you been employed by them, approximately? A. 28 years.

Q. Specializing in marine insurance?

A. Yes, sir.

Q. Where has your employment been? In San Francisco, or elsewhere?

A. New York and San Francisco.

Q. Both places? A. Yes, sir.

Q. During that full period of time you have been connected with the phase of their business that is connected with marine insurance, is that right?

A. Yes, sir.

Q. You are a member of the Society of Average Adjusters, are you? A. Yes, sir. [92]

Q. If that is the correct title; and you are familiar with general forms of marine insurance of all types, are you? A. Yes, sir.

Q. Hull, cargo, and every type, is that correct?

A. Yes, sir.

Q. Can you tell us whether it is a frequent or infrequent occurrence in marine hull policies to refer to the vessels as property?

A. Quite frequent.

Q. Now, in connection with the types of hull policies, is it correct that the great majority of the hull policies are on a time basis? A. Yes, sir.

(Testimony of Theron L. Prentiss.)

Q. And that they cover the property insured, whether or not it is moving or "in transit," is that correct? A. Yes, sir.

Q. In connection with the less frequent type of hull policy which has been referred to here as a voyage policy, is it common for such voyage policies, or is it uncommon for such voyage policies to cover the vessel, the property insured, at times or for occasions when it is actually not "in transit" or moving? A. It is customary.

Q. To cover it when the vessel may be stationary or not actually on her voyage, is that correct?

A. Yes, sir. [93]

Mr. Henry: That is all.

Cross-Examination

By Mr. Charles:

Q. Mr. Prentiss, you spoke of the word "property" appearing in the hull policy. Now, does that word appear in the Sue and Labor clause, or is it used as a word to describe the ship and her equipment?

A. The ordinary hull policy, it appears in the Sue and Labor clause; it also appears in the Perils clause and it appears in the Collision clause.

Q. None of those clauses in which the property covered by the insurance is described, are they?

A. No.

Q. Mr. Prentiss, you were here in court, I think, when Mr. Galbreath and Mr. Knowles testified this morning and this afternoon? A. Yes, sir.

(Testimony of Theron L. Prentiss.)

Q. You heard their testimony, did you?

A. Yes.

Q. Could you tell us whether the statements that they made with reference to the use of the words "in transit" with reference to things carried as distinguished from the vehicle are in accordance with your understanding?

A. I would not say so.

Q. You would not say so? A. No. [94]

Q. Can you tell us, would it be correct to say, then, that you disagree with the substance of the testimony of those men?

A. Not the substance of it, no.

Q. Can you tell me, with your familiarity with insurance, if somebody spoke of a ship "in transit" would you consider it an insurance expression?

A. I would not say that it was an insurance expression, but I would certainly understand what was meant by the term, I think. [94-a]

Q. In fact, wouldn't you throw up your hands and say, "You never see that in connection with a ship. You are only talking about cargo"?

A. No, I would not say that.

Q. You would not think that that was a misuse of the term? A. No.

Q. Mr. Prentiss, I wonder if you know of Mr. George Inselman of the Marine Office of America?

A. Yes, I know him.

Q. If you knew his testimony was the same you would disagree with him, too, would you?

A. Yes.

(Testimony of Theron L. Prentiss.)

Q. Do you know Mr. Pease, the American manager of the British Foreign in New York?

A. Yes.

Q. If that was the substance of his testimony you would still disagree? A. Yes.

Q. Do you know Homer Wayne of the Albert Wilcox Company? A. Yes.

Q. If that was the substance of his testimony you would still disagree with that? A. Yes.

Mr. Charles: I think that is all.

Mr. Henry: That is all. Thank you. [95]

MELVIN PRICE

called as a witness on behalf of the plaintiff in rebuttal; and having been first duly sworn, testified as follows:

The Clerk: State your name to the Court, please. A. Melvin Price.

Direct Examination

By Mr. Henry:

Q. Mr. Price, you are employed by the Matson Navigation Company? A. Yes.

Q. The plaintiff in this action. Were you employed by the Matson Navigation Company in December, 1942? A. Yes.

Q. And you had been employed by them for several months prior to that, is that right?

A. Yes.

Q. And you have been employed by them steadily ever since, is that correct? A. Yes.

(Testimony of Melvin Price.)

Q. Your employment with them is that of insurance manager? A. Correct.

Q. And all matters of insurance are referred to you, is that correct? A. Yes.

Q. I will show you a photostatic copy of the Journal of Commerce and Commercial News dated December 31, 1942, Page 3, [96] and particularly an article headed there, "WDC to Consider Claim for Losses," and ask whether you ever read that article? A. No, I have not.

Q. Did you ever see that article prior to coming to court today? A. No.

Q. Do you in the office of Matson Navigation Company regularly read and see the New York Journal of Commerce?

A. No, I do not personally.

Q. Do you know what the practice is with respect to the scanning or reading of any such journals as the New York Journal of Commerce or other newspapers or publications in the Matson Navigation Company?

A. The practice is on all journals that have come in, including this, to have someone in the executive department clip those items which seem to be important to the company, and then they are circulated among the officers and the various department heads.

Q. And who is the person who does that scanning and clipping? Is it an executive?

A. No, that is done by either one of the stenographers who are in that department.

(Testimony of Melvin Price.)

Q. Did you ever receive a clipping of this article we referred to in the New York Journal of Commerce for December 31, 1942? [97]

A. No, I did not.

Mr. Henry: That is all.

Cross-Examination

By Mr. Charles:

Q. Mr. Price, did you know anything about the fact that there was a War Damage Corporation prior to this particular claim being pressed?

A. Yes.

Q. Do you know what executives in your company see the Journal of Commerce, the New York Journal of Commerce?

A. I do not, no, other than the fact that clippings are circulated.

Q. And the Journal of Commerce has one of the principal shipping pages of the marine journals in the country? I expressed myself badly. Is it well known? A. It is well known.

Q. Do you know whether Mr. Roth, the President of your company, sees the Journal of Commerce? A. I do not.

Q. Do you know whether Mr. Walton sees it?

A. No.

Q. Or Mr. Gallagher, the Operating Manager?

A. I do not.

Q. Do you know whether Mr. Fraser Bailey, the former Executive Vice-President, sees it?

A. No, I do not. [98]

(Testimony of Melvin Price.)

Q. And you do not know what other men in the company may see it? A. No.

Mr. Charles: That is all.

Q. (By Mr. Henry): You do know, Mr. Price, there was no clipping referred to you and no reference was made to you of this article at any time until in court today, is that correct?

A. That is correct.

Mr. Henry: That is all.

Mr. Charles: If the Court please, the deposition of Mr. Goodale I think also is one which we may offer without the necessity of reading it. Your Honor mentioned the problem which has developed by the testimony and the objections. The testimony is of the type with which your Honor is familiar, and we can perhaps refer to the citations of authority which we believe support the testimony which we have sought from Mr. Goodale on direct examination in our briefs. I would, however, like to offer at this time a stipulation with a few corrections which refers to both Mr. Goodale's deposition and Mr. Knarr's deposition, both of which are minor corrections, which Mr. Henry and we have agreed upon. I will at this time offer the deposition in evidence with the understanding that the same objections may be deemed reserved.

Mr. Henry: May I make this suggestion with regard to [99] those corrections, your Honor: There is no disagreement at all on them, but at the same time, in the next day or so, if it is agreeable with

Mr. Charles, we could obtain the depositions from the Clerk and ourselves make those corrections so that your Honor won't have to check back and forth, and they will be on the face of the depositions. We did do the same sort of thing, as far as making corrections is concerned, on the New York depositions. I would like to make this suggestion: Mr. Goodale's deposition does involve a number of things that I think for the Court's understanding of the case, and also particularly with reference to the objections to certain of his testimony there, that if we could have a hasty reading of it, it would be helpful.

The Court: Why don't you state the substance of it or read such parts of it as you think are necessary?

Mr. Henry: I think that would be helpful.

The Court: What is the substance of the testimony? What is he testifying about?

Mr. Charles: He is testifying about the practice of the corporation, its interpretations of the statute with relation to the claims to be allowed, its interpretations of the statute with respect to the power of the corporation to make exceptions, the fact that it did, and also the claims that had been filed for the loss of ships, the three that Mr. Henry mentioned this morning, what disposition had been made of [100] those claims. That is the principal substance of it.

The Court: What you are really offering the deposition for is to show that the corporation, in

performing its administrative functions under this statute, made rulings and interpretations concerning this very matter or like matters?

Mr. Charles: That is correct.

The Court: Of course, we already know what the decision is in reference to this matter, because accompanying the Complaint is the letter of decision in which the corporation gives its reason for rejecting the claim in suit. Now, are there some other claims of a similar nature that were passed upon and an interpretation given?

Mr. Charles: There were only two. The other two were the Montebello, a Union Oil tanker, which, as explained this morning, was the subject of a suit in Judge Roche's court with a jury verdict in our favor, and the other case was, as the testimony shows, a fishing vessel which sailed out of a port on the Atlantic Coast and was lost at that time.

But we go further than this: we show in Mr. Goodale's testimony that the Corporation construed the statute to give it the authority to make exclusions as to the type of property covered, and that is the substance of his testimony. That is, if the Corporation did not have the power to make any exceptions, and the statute, as contended by our opponents, simply applied to all property, as they say, real and personal, [101] then the actions of the Corporation would not be in harmony with the statute. The Corporation took the position that it had the right to exclude the same types of property that were excluded in the press release and other

types, and that it had likewise the authority to exclude insurance claims, and we feel that that testimony should carry weight in the construction of the statute, because as the cases show, an agency of the Government which was instrumental in proposing the introduction of a statute in Congress, the interpretations of such agency should be given particular weight, and the interpretations referred to in Mr. Goodale's deposition cover not only the exclusion of ships, which has already been covered in the resolution and the regulations that we spoke of, but it refers to the practice pursuant to those regulations of excluding other types of property.

The Court: During the six months period? I am colloquially referring to it as the sixth months period.

Mr. Charles: Yes, I am referring to that. They excluded other types of property during that period, and we simply point out that if the Corporation did not have the power to exclude ships, they did not have the power to exclude anything, and their action in excluding all other types of property would not be proper. Or to put it the other way, the fact that they did exclude those things is a construction of the statute that they have the power to exclude them. [102]

The Court: That is really the question before the Court, isn't it?

Mr. Charles: That is correct.

The Court: Because Mr. Henry contends that during this six months period, because of reasons which he briefly touched upon and I suppose will

be argued in the briefs, that during the six months period there was some intent to take away or not to vest in the War Damage Corporation the power to make any exclusions during that period. Now, either they had that power or they did not. If they had the power, I suppose if it is determined they had the power to make the exclusions during the sixth months period, why, then, that would determine the matter.

Mr. Henry: With the further question that whether that power to exclude was subject——

The Court: Was seasonably and properly and not arbitrarily exercised.

Mr. Henry: That is correct, your Honor.

The Court: I will read this deposition, subject to any of the objections that have been made, but it seems to me that is the very question I have to determine. I mean I think I can take it as a fact, from what you said, that they did make exclusions for other property other than ships. I take it they did do that.

Mr. Charles: That is correct. [103]

The Court: The question is, did they have the power to do that. That I will have to determine irrespective of whether they did or did not do it.

Mr. Charles: Yes, the point is, with respect to this testimony, the Courts have held that in deciding the scope of the statute the Courts may be guided by the administrative determinations of the agency itself in construing the statute.

The Court: Only if it is reasonably within the scope of the power of the agency. In other words,

if the OPA decided that they were going to stop a man from delivering butter to an apartment house under rent regulations, I could say, "I am not going to pay any attention to that. That is not within the scope of their power." Isn't the main question whether they had the power to do what they did?

Mr. Charles: That is true, but the authorities——

The Court: I think I understand what your argument is, that the Court should give weight, where there have been certain powers and functions entrusted to an administrative agency to the interpretations of that agency of the manner and mode in which its powers should be exercised. There is no doubt about that. That has been commented upon in many authorities under many statutes. But the agency could not make a regulation that would give it the power to exercise a power under the statute if it did not have the power under the statute. [104]

Mr. Charles: I think the testimony is admissible on the very point as to whether the agency has the power. For example, your Honor may recall the case of *United States vs. The Truck Association*, which is in 310 *United States*. There again was involved the meaning of the term "employees" as used——

The Court: I read that. I think I read that case in connection with the newspaper cases I had a while back. You mean under the Social Security Act?

Mr. Charles: Under the Fair Labor Standards Act.

The Court: That is right.

Mr. Charles: You will remember the question there was the meaning of the word "employees." The contention was made that the term related only to employees dealing with the matter of safety, and the only jurisdiction of the ICC was over employees who had anything to do with the problem of safety.

The Court: I think that must be a different case then. As I remember the trucking case, it was a question of whether or not the trucking company itself was a service company. The trucks were furnished by individuals themselves, and the question was whether they were employees or whether there was employment, or whether they were independent contractors. I guess you must be referring to a different case.

Mr. Charles: That is a different case. I have excerpts [105] here.

Mr. Henry: I assume this will be covered by your brief.

The Court: I think, gentlemen, not to prolong this argument, it would be better to submit the deposition, I will read it, and to the extent to which I think, after I have read your brief and considered the matter, there is need to give weight to the decisions or interpretations of the War Damage Corporation, and to the extent that they are applicable, if they are applicable, I will either give them weight or not give them weight, depending upon what the whole picture requires, after you have briefed the whole case.

Mr. Charles: That would be fine.

The Court: I think that is the fair way to do.

Mr. Charles: I do not want to be understood as subscribing to the theory that all the questions and answers on cross-examination are pertinent. The scope of the cross-examination was somewhat enlarged.

The Court: I do not think there is much of a question of conflict here, gentlemen, as to any factual matters. It is pretty much a question of whether there is a cause of action under this statute or not.

Mr. Henry: I think that is correct.

The Court: I think I should consider anything that reasonably sheds light upon it, as long as it has some proximate relationship to the matter.

Mr. Henry: There are objections that we have raised throughout Mr. Goodale's deposition there, and primarily on his direct statement that he had studied the legislative history, and that having studied the legislative history he reached these conclusions; that we consider utterly contrary to the principle of law that that is something within the province of the Court.

The Court: Are you intending to present, either side, references to the Congressional Record in this matter?

Mr. Henry: Yes.

Mr. Charles: If the Court please, we would like a stipulation that the reports before both committees, or, rather, the records of the hearings before both committees, the reports of both the House and

the Senate and the Congressional Record may be referred to by either counsel or by the Court, and for convenience we will make the references which appear to be pertinent in our briefing, and then if we may leave with the Court the original record of all those documents, and while the Court, particularly under the recent decisions, has very wide latitude, I believe, in making reference to the legislative history or any part of it, I think it would clarify the matter if we covered it by stipulation.

Mr. Henry: I hesitate to enter into any stipulation that these committee hearings are admissible, in view of the fact that the bill as it finally came out of the House of Representatives [107] and was finally adopted was quite different from the bill that was originally proposed. I have no objection to stipulating—not stipulating, but acknowledging, I might say, the rule of law that the Court may refer to any proper legislative record on the question. But I do not want to be in a position, your Honor, of stipulating to something I do not consider has bearing on it.

The Court: To be frank about it, I do not think it makes much difference whether you stipulate to it or not. The Supreme Court has long since departed from the original rigid rule that the only statement that should be considered is the statement of the Chairman, the member of the Congress in charge of the bill when he made his report to the Congress. Now they refer to discussions on the floor of Congress and make a very liberal use of the Congressional Record.

I just recently decided a naturalization case in which somewhat the same question was raised as to the administrative interpretation of a statute. If you phone my secretary she will give you the name of the petitioner. It was a case in which the Commissioner of Immigration put his interpretation as to the meaning of one of the provisions of the statute providing for naturalization with respect to those who served in the armed forces during the war, and as a result of it I studied into the Congressional proceedings myself and appended them all to the opinion for the purpose of showing what the intent of Congress was in passing the statute. So I think whenever there is a claimed interpretation of a statute, particularly where the interpretation is entitled to weight because of the fact that it is by an administrative officer, the Court is free to examine into the Congressional proceedings themselves to see what the intent, if it can be found, in the record is with respect to the purpose of the legislation. I would have to dig that out myself, and as long as both of you have dug it out you might as well make my job easier by giving it to me.

Mr. Charles: The only difficulty about that, your Honor, is the hearing before the Senate Committee on Banking went on for a number of days and the record is quite large.

The Court: The committee made a report, didn't it?

Mr. Charles: It made a report, which is only two pages.

The Court: Aren't there any statements on the floor by the Chairman of the Committee?

Mr. Charles: Yes.

Mr. Henry: Yes, your Honor.

The Court: The report of the Committee and the statements by the Congressman in charge of the bill on the floor are the vital ones, because those are the statements on which the rest of the Congress acted in voting on the bill.

Mr. Henry: That is our position.

The Court: The Court has called attention to that in [109] several cases.

Mr. Charles: And of considerable importance are the matters that came up in the hearings when the particular amendments that are involved were decided upon.

The Court: Are there any statements made before the Congress either in the report of the committee or on the floor stating the reasons for the appearance of certain language or the non-appearance of other language in the bill?

Mr. Charles: If Mr. Henry and I once got started on that, your Honor would probably stop us, because we would both reach diametrically opposite conclusions somewhat vehemently. For that reason we believe it would be desirable to have all that record available.

The Court: Perhaps you are right. Suppose you let me have along with your briefs the whole business, and each side call attention to what you want to call attention to and I will have it all before me.

Mr. Charles: Although it is probably unnecessary, may I be considered as offering that in evidence at the present time? We will make the offer, just so there will be no question as to whether the record of legislative history is before the Court.

The Court: I never heard of that being offered in evidence.

Mr. Charles: We looked into the matter quite carefully [110] as a matter of excess caution in connection with the Montebello case, and we could not find any satisfying authority either that it had to go in evidence or did not have to. So we protected our record by making the offer.

The Court: You will have to be somewhat specific on that.

Mr. Charles: Yes.

The Court: I do not want to discourage you from putting in what you think is necessary for your record. I am going to consider it anyway, so it won't make any difference.

Mr. Charles: That is the reason I suggested a stipulation.

The Court: Don't you think that would protect you sufficiently, the statement of the Court upon this hearing that the Court will consider what either side wishes to call the Court's attention to in connection with the Congressional proceedings? I would think that that would be sufficient to protect you without encumbering the record. That is in effect a ruling by the Court, isn't it, that it will consider any matters in the Congressional Record,

the Congressional proceedings that either side wishes to call the Court's attention to in connection with the passage of this legislation?

Mr. Charles: I think that expression is sufficient, and we will then simply make it available at the time our briefs are filed. [111]

There is just one other thing to which I would like to call your attention. Regulations A has as a part of it the standard policy of the War Damage Corporation, and in view of the fact that it is in such small print I would like to offer separately this War Damage Corporation Form No. 1, Special Policy, which is a duplicate of that included in the Regulations A.

The Court: But in more readable type?

Mr. Charles: In more readable type.

The Court: Very well.

(The policy referred to was thereupon received in evidence and marked Defendants' Exhibit A.)

Mr. Henry: I objected to Regulations A, so I assume that it includes any part thereof.

The Court: I think you gentlemen probably can tie in most of these matters into your main points.

Mr. Henry: I cannot resist the temptation, your Honor, if I may, having been a little disappointed, that time did not permit us to read Mr. Goodale's deposition, just to make this observation, that Mr. Goodale is the General Counsel for the War Damage Corporation and in a sense, a very real sense there,

an advocate. Mr. Goodale in large part testified, as I mentioned, as to what he determined to be the meaning of the statute from his own study of the legislative history. Now, he concluded, according to his own statement, that marine [112] property "in transit" covered cargoes, and that cargoes were covered by insurance during this free period, and that that was the provision of the law, that they should be covered, but on their own determination they said, "We won't cover vessels." The point I am making there, your Honor, is that on the reasonableness of this exclusion we come down in the final analysis pretty much to a straight determination of whether vessels are property "in transit," because Mr. Goodale and the War Damage Corporation acknowledge that for those items that they consider property "in transit" they did cover, that the statute authorized the coverage, and they gave the coverage. It seems to me it comes back in that connection, when we are considering the interpretation of the statute, and so forth, and the legislative history, whether they were correct and whether they had the power to make that exclusion.

The point I am trying to make, your Honor, is that they have determined as far as marine property in marine transit, according to their definition of what marine property is, is covered; so it seems to me to spell out pretty clearly if vessels are properly to be considered property—and we submit that they are—we likewise should receive the same coverage that was acknowledged to apply under the statute to this free period for other marine property.

Mr. Charles: Of course, we disagree in every way on that. I think that ships were clearly outside the scope of the [113] statute, and the Corporation's understanding of the statute was that ships were not covered, but the term "property in transit," as the legislative history connected with the interpretation of that amendment, which was not in the original bill, shows, referred only to things carried and not ships, and we will make references to the committee hearings in which both Jesse Jones and Admiral Land appeared, the one in person and the other through a letter, and said, "We are not going to have our agencies occupying the same field. The Maritime Commission can do it. We are not going to do it." The Corporation then to make doubly clear its position, and in order to have a guide in handling claims, passed this October 2, 1944, resolution, in which they consolidated their prior practice, referred to Regulations A, and set down the various classes of property, which were numerous, that they would not cover. So in the light of the history of the Act itself and its background we see nothing illegal in the position taken by the Corporation and its powers to exclude property is quite evident, not only in the terms of the statute itself, but in the legislative history.

The Court: Before we fix the time for briefing in this matter, I would like to inquire whether this question of law was presented to the Court in the Montebello case. Was it?

Mr. Henry: We consider it was from this standpoint, your Honor; as far as their general right

to exclude vessels. [114] The question arose in the Montebello case whether the vessel was inside or outside the 3-mile limit. The "in transit" question was not involved.

The Court: In other words, if the Jury had decided the vessel was——

Mr. Henry: ——inside the 3-mile limit, the only basis the case could have gone to the jury on, the plaintiff would have been entitled to a recovery. In other words, the case got to the jury simply because there was some factual issue in dispute as to whether the vessel was lost inside the 3-mile limit.

The Court: The Jury decided the vessel was outside?

Mr. Henry: Outside the 3-mile limit.

The Court: Therefore clearly the statute did not apply.

Mr. Henry: That is right.

Mr. Charles: As I tried that case, perhaps——

The Court: If the Jury had decided it was in the 3-mile limit, wouldn't the Court still have to decide the question of law?

Mr. Henry: I think the Court decided that question by submitting it to the Jury.

The Court: What was submitted to the Jury? The whole case or some special issue?

Mr. Henry: If the Court had decided that this attempted exclusion by the War Damage Corporation of all vessels under [115] their order of October 2, 1944, which we call the retroactive order, if the Court had considered that that was controlling,

there was no occasion for submitting that case to the Jury. That would throw the case out completely. Whether the vessel was in or outside the 3-mile limit would not determine if that regulation was valid.

The Court: Did the Court consider all this legal argument?

Mr. Henry: There were lots of motions.

Mr. Charles: Inasmuch as I was counsel, if counsel will permit me, we made a motion raising the same issues on a motion for judgment for the defendant, and our opponents made a motion to strike our answers, which were similar, although as Mr. Henry said, the issue of property "in transit" was not involved, because the Montebello was going from San Luis Obispo to Vancouver, not between ports in the United States and possessions. Judge Roche took that under submission and we briefed the points quite fully, including the same issues we are reaching here, that there was no cause of action, and the Corporation had excluded the ships, and Judge Roche denied both our motion for judgment on the pleadings and also denied the motion to strike the answer. Then when the case got to the Jury Judge Roche said—and my only justification for mentioning this is that it is in the record—that he was disposed to grant the motion for the defendant and direct a [116] verdict, and although he said that at the time the jury trial had gone on for a considerable length of time, and we deemed it advisable not to make such a motion. The case was submitted to the jury, and the jury found, as Mr. Henry stated,

the ship was lost outside the three-mile limit, and therefore it could not be property situated in the United States, and having sued not only on the statute but on the press releases, because the press releases, having no application to property "in transit," nevertheless referred to property situated in the United States, and they claimed, both on that basis and on the basis of the statute, which likewise applied to property situated in the United States, and contended we did not have the authority to exclude from protection various types of property.

The Court: Did Judge Roche's statement have reference to the issue to be submitted to the jury, or the matter of previous motions?

Mr. Charles: With reference to the matter of the previous motions.

Mr. Henry: Those were both denied.

The Court: He had already denied them?

Mr. Charles: That is quite correct.

The Court: I do not quite get the reason for Judge Roche's statement that he was inclined to direct a verdict, if it referred to the issue that was being submitted to the jury. [117]

Mr. Ransom: Your Honor, maybe I can make a statement of that as an impartial observer—very impartial. The original motions that were made long before the trial Judge Roche denied; he denied our motion for judgment on the pleadings and also denied their motions to strike the answer. In effect, by doing that he decided nothing. At the end of the plaintiff's case Judge Roche asked whether we would like to

make a motion to direct a verdict. Mr. Charles made the statement that we would, but assumed he would reserve ruling. As the trial went on, and about two days before the end of the trial, Judge Roche stated in open court that he would be inclined to grant our motions for a directed verdict. We then decided not to make the motions, not to renew the motion at the end of the case, and in chambers—I do not know whether it is correct to say it was in chambers, but I think it is a fact—it was determined the morning that the matter was finally submitted to the jury that we would not have a motion for a directed verdict before Judge Roche, as he indicated clearly he would grant that motion——

Mr. Henry: I thought you said he was inclined to consider it. I do not get it.

Mr. Ransom: As it turned out, frankly, we won the case on the facts. We did not want the case considered on the law. We wanted a clear-cut verdict on the facts, which is what we got. We therefore did not at that time renew the motion [118] for a directed verdict. The court did not have to decide a motion for a directed verdict and did not decide the motion for a directed verdict.

The Court: That still does not clarify the matter in my mind. Do you mean that Judge Roche was going to direct a verdict by reversing his previous decision on the motions? If so, that is one thing, but if he was going to direct a verdict on a factual issue, that would be another thing. He could very well come to the conclusion that he should direct a verdict be-

cause of the inherent power to decide that the evidence is so preponderate one way or the other or undisputed that the court will, on a factual matter, direct a verdict. He may have had that in mind and there wasn't any question in his mind that the jury should decide and could not do anything else but decide that this ship was outside the three-mile limit.

Mr. Charles: Your Honor, I would really prefer not to comment any more on this, and I think, for the protection of our record, we might ask if the Court would disregard the comments we have made with respect to the other case.

The Court: What prompted my inquiry was that this is one court, and if some other judge has made a decision on the precise question that is before me, it would be travesty on justice to have Judge Roche decide one way and Judge Goodman decide another way on the very same question, and [119] we have always made it a practice of avoiding that. As a matter of fact, Judge Roche sat with me the other day in an admiralty case because of the fact that he had decided a case arising out of the same accident, and it would have been ridiculous for me to have held the respondent liable where the same act of negligence was alleged. Two people got injured at the same time and place as the result of the same act of negligence. Just because we have a multiple judge court does not mean that justice should founder itself that way. That is what prompted my question.

Mr. Charles: I have no question as to the propriety of your Honor's inquiry, but I have some question as to the propriety of my answer, because the matter was involved. While it is in the record, it is in statements which Judge Roche made, and we are clear in our own interpretation of them, but I am not clear enough with respect to the record but what Mr. Henry might draw some other inference from that.

Mr. Henry: My only contention in that regard, your Honor, is there is no decision in this court on either this factual issue or this issue of law, because the matter that was before Judge Roche was the simple question of whether it was lost inside the three-mile limit. Our vessel was lost far at sea.

The Court: Neither side is going to rely on the decision of Judge Roche?

Mr. Henry: That is correct. I do not think it has any [120] direct application to this case at all.

The Court: How did you want to brief this matter?

Mr. Henry: My suggestion would be that we have twenty days for opening, possibly twenty days for reply, and then ten days for a final brief from the plaintiff.

The Court: Is that satisfactory?

Mr. Charles: That is satisfactory.

Mr. Henry: There is only this question: I do not know whether Mr. Charles has an answer to that question I was asking you about the other day.

Mr. Charles: We might want to shorten it. We did get an answer. I am not sure of the substance

of it. Your Honor, that is with respect to the question of the period of the existence of the corporation. Mr. Henry was somewhat concerned lest the corporation completely expire by June before it would be possible for him to get a final decision from the Circuit Court of Appeals and from the Supreme Court within the limited time. We are endeavoring to find out for him what that situation is.

The Court: I suppose some other Government department will carry on, as in the case of all these other agencies. I do not think the Government ever escapes its obligations in that way, or attempts to.

Mr. Charles: We will make available to Mr. Henry all the information we have, and the only effect of it will be that [121] he might wish to cut down that time, and that we could do by stipulation.

Mr. Henry: Would it be agreeable, your Honor, that we get in touch with you or your clerk when the briefs are in and arrange for oral argument at a convenient time?

The Court: Of course, that time limit is not going to be binding on the court.

Mr. Henry: I understand that. I was just referring to the question of fixing the time for briefs and for oral argument.

The Court: The briefs will be filed 20, 20 and 10. I will mark it June 23rd for submission. If you want to shorten that period you can do so by agreement.

Mr. Henry: And then we could arrange for oral argument at a convenient time after the briefs are in.

The Court: Do you want to argue it besides?

Mr. Henry: Whatever your Honor's pleasure is.

Mr. Charles: I think it would be desirable. Your Honor might have questions.

The Court: Suppose you let that go until I have had a chance to study the case. There is no use of my hearing argument before I have read the briefs.

Mr. Henry: Thank you.

Mr. Charles: Thank you, your Honor. [122]

CERTIFICATE OF REPORTER

I, J. J. Sweeney, official reporter, certify that the foregoing 122 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ J. J. SWEENEY.

In the United States District Court in and for the
Northern District of California, Southern
Division

No. 24575-G

MATSON NAVIGATION COMPANY,
a Corporation,

Plaintiff,

vs.

WAR DAMAGE CORPORATION, a Corporation,
Defendant.

DEPOSITION OF HANS O. MATTHIESEN

Thursday, June 21, 1945

Be It Remembered, that on Thursday, the 21st day of June, 1945, at 11:15 o'clock a.m., pursuant to oral stipulation between counsel for the respective parties, at the office of Messrs. Hall, Henry & Oliver, 626 Matson Building, 215 Market Street, San Francisco, California, personally appeared before me, Ella Cook Kelly, a Notary Public in and for the City and County of San Francisco, State of California, Hans O. Matthiesen, a witness called on behalf of the plaintiff herein.

Messrs. Hall, Henry & Oliver, represented by Lyman Henry, Esquire, appeared as attorneys for the plaintiff; and Messrs. Lillick, Geary, Olson & Charles, represented by Allan E. Charles, Esquire, appeared as attorneys for the defendant.

(Deposition of Hans O. Matthiesen.)

The said witness having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing [1*] but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the Notary Public, after administering the oath to the witness, need not remain further during the taking of this deposition.

It was further stipulated that the said deposition should be recorded stenographically by R. R. Roberson, a competent official shorthand reporter and a disinterested person, and thereafter transcribed by him into longhand typewriting, and by stipulation between counsel for the respective parties the reading and signing of the deposition by the witness were waived.

It was further stipulated that all objections to questions propounded to the said witness shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

Mr. Henry: Mr. Charles, this deposition can be taken in the usual manner, and the stipulations will be incorporated in the deposition?

Mr. Charles: Yes, fine.

Mr. Henry: And including a waiver of signing? Is that agreeable?

Mr. Charles: Yes.

*Page numbering appearing at top of page of original Reporter's Transcript.

(Deposition of Hans O. Matthiesen.)

Mr. Henry: And the Notary may be excused?

Mr. Charles: Yes.

HANS O. MATTHIESEN

a witness called on behalf of the plaintiff, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

By Mr. Henry:

Q. Captain, your name is Hans O. Matthiesen, and you are at the present time a commander in the United States Naval Reserve, is that correct?

A. That is correct, yes.

Q. In December of 1941, you were the master of the American steamer "Lahaina," official number 220763? Is that correct?

A. That is correct.

Q. And the vessel at that time was owned by the Matson Navigation Company?

A. She was.

Q. And you were employed as master by the Matson Navigation Company?

A. That is right.

Q. Do you recall the tonnage, gross tonnage, registered tonnage of the "Lahaina," Captain?

A. 5645 tons.

Q. Gross registered tonnage?

A. Gross, yes.

Q. And the net tonnage? A. 3517.

(Deposition of Hans O. Matthiesen.)

Q. And when was the "Lahaina" built?

A. In 1920.

Q. What was the last voyage, or rather what was the last port of departure of the "Lahaina" in December of 1941? [3]

A. Ahukini, Kauai, Territory of Hawaii.

Q. And on what date in December did the "Lahaina" depart from Ahukini?

A. December 4th, 1941.

Q. And where was the "Ahukini" bound for at that time?

A. Where was the "Lahaina" bound for?

Q. Yes, the "Lahaina"?

A. Bound for San Francisco.

Q. Did she have any cargo aboard?

A. Yes, she had about a thousand tons of cargo aboard.

Q. And what was the character of the cargo generally?

A. Mostly scrap iron and—scrap iron and, I believe, a few items of general freight, the nature of which I really have forgotten.

Q. Was all of that cargo from Hawaiian ports?

A. It was all loaded in Hawaiian ports, yes.

Q. And had the "Lahaina" been voyaging between Hawaiian ports and the Mainland at all times within recent months prior to this voyage?

A. Prior to that voyage, yes, as long as I had been on her.

Q. Yes. And where is the "Lahaina" today, if you know, Captain?

(Deposition of Hans O. Matthiesen.)

A. I know. She's sunk by a Jap—a Japanese submarine, rather.

Q. And what was the first occasion that you learned of the attack on Pearl Harbor and the state of war between the Empire of Japan and the United States?

A. The first indication we had of that was when we heard on our radio sets that Pearl Harbor had been attacked on the [4] morning of December 7th.

Q. 1941? A. 1941.

Q. And at that time you were on this voyage from Ahukini to San Francisco?

A. Yes, sir, I was.

Q. Just tell us in your own words if you can, Captain, what occurred with respect to your first learning of any enemy submarine that attacked you, or any enemy action which resulted in the sinking of the "Lahaina"—just in narrative fashion, if you can throw your mind back to those events, Captain.

A. In connection with the sinking of the "Lahaina" only, you mean?

Q. Yes.

A. I see. All right. At about 1:40 p.m. on December 11th, I was on the bridge with the second officer, when a shot was fired over the "Lahaina," which we discovered when the shell struck the water ahead of the ship, and immediately after we saw the splash of the shell we heard the report of the shell exploding, and immediately after that

(Deposition of Hans O. Matthiesen.)

the explosion of the powder charge from the submarine, so we turned around in the direction where that sound came from and there was the submarine lying broadside to in the sun.

Q. It was clear and broad daylight?

A. Clear and broad daylight, beautiful weather, a northeasterly wind blowing about force 4, and the submarine was stopped and——

Q. On the surface?

A. On the surface, yes. So naturally we took that as a warning shot for the vessel to stop [5] in order to be searched under international law, which we did.

Q. You stopped?

A. We stopped the engine and hove to.

Q. And then what happened, Captain?

A. And of course the Japanese kept firing. The second shot came close aboard, and the third shot hit in the machine shop on the starboard side amidships about, oh, I should say ten feet above the water line, and the shrapnel off the shell pierced the bottom of the starboard lifeboat, which was swung out over the side for just such an emergency. There being a state of war, naturally we took that precaution.

Q. Were any of you, or any of the officers or crew, in the lifeboat at the time that these other subsequent shells that you have referred to started striking the "Lahaina"?

A. No, after the third shell struck, then I ordered to abandon ship, because, in my opinion, the

(Deposition of Hans O. Matthiesen.)

Japanese submarine had the intention of keeping on shelling it, you see.

Q. Now, about what was the location of the "Lahaina" at the time that you sighted the submarine, when she fired on you as you have mentioned?

A. The position in latitude and longitude, you mean?

Q. Yes, approximately.

A. Yes. All right. The latitude twenty-seven thirty-five north, and one hundred and forty-seven twenty-five west.

Q. Longitude? A. Longitude.

Q. And was the vessel bound for San Francisco at that time? [6] A. Yes, sir, she was.

Q. Was she on her regular or, you might say peacetime course for San Francisco at that time?

A. No, I wouldn't say that she was on her peacetime course.

Q. What was the difference, if any, from her ordinary peacetime course? Was she north or south of her peacetime course?

A. Well, we had received orders to—on two occasions previous to the sinking, to change course, so naturally she was not on the great circle track from Ahukini to San Francisco.

Q. And the course that she was on at the time that the submarine attacked was to the north or south of the great circle?

A. It was to the south of the great circle track.

(Deposition of Hans O. Matthiesen.)

Q. To take her out of the more frequented or normally frequented track of vessels?

A. That is right, yes.

Q. But she was still bound for San Francisco at that time?

A. Bound for San Francisco, yes.

Q. About how far off the "Lahaina" was the submarine at the time these first shots were fired?

A. About 1500 yards.

Q. Did the position of the submarine change any after that with respect to the "Lahaina"?

A. Oh, yes, after the "Lahaina" was stopped and they had been shelling the "Lahaina's" starboard side, and after we abandoned ship, the submarine crossed the—in other words, went ahead across the bow of the [7] "Lahaina," and then bore down on the "Lahaina" on a parallel line of approach, and as the submarine got close to the "Lahaina" she put her stern up to the midships section about 150 yards off, and from that position shelled the engine room, firing about five or six shots, putting a large hole into the engine room itself so that the engine room filled full of water, you see.

Q. And where were you at that time?

A. At that time I was in the lifeboat on the port side of the "Lahaina" and about a hundred yards from the Japanese submarine.

Q. Did you have any means of identifying the nationality, or verifying rather the assumption that you had made that it was a Japanese submarine?

(Deposition of Hans O. Matthiesen.)

A. Oh, yes, we could tell by the stature of the men on deck and also by the commands that were given at the time.

Q. Have you ever been—had you before the sinking ever been to Japan?

A. Oh, yes, on quite a few occasions—I should say about ten or twelve times.

Q. And could you recognize the speech as being that of Japanese nationality?

A. Oh, yes, yes.

Q. That is, the commands and speech that you heard from the men on the surface—on the deck, rather, of the submarine?

A. Of the submarine, yes.

Q. That was when you were only about a hundred yards off, after you were in the lifeboat?

A. Yes. [8]

Q. Now, did all hands on the “Lahaina” get away in the lifeboat?

A. Yes, sir, all of them got in the boat.

Q. And you were in a single lifeboat?

A. In one lifeboat, yes; quite crowded, by the way.

Q. Now, about how many shots from the submarine in all were fired toward the “Lahaina”?

A. I should say twenty-five shots.

Q. And about how many of those shots took effect in the sense of hitting the “Lahaina”?

A. Twelve.

Q. And you judged that from what, captain?

(Deposition of Hans O. Matthiesen.)

A. From the holes that we counted after we were in the lifeboat.

Q. Now, after you were in the lifeboat did you go back aboard the "Lahaina"?

A. We did, yes, the next morning.

Q. That would be on the morning of December 12th? A. That is right, yes.

Q. When did the submarine leave the scene, approximately?

A. Oh, he left—he left about half an hour later—well, let's see I should say he left about 2:30.

Q. So that there was less than an hour from the time that the submarine first fired until the submarine disappeared from the scene?

A. That is right, yes.

Q. And did the submarine disappear on the surface, or did she submerge?

A. No, she disappeared on the surface, steaming away in a northeasterly direction.

Q. Now, when you went back aboard the "Lahaina" on the [9] morning of December 12th, did you make a survey of the damage to the vessel to determine whether there was any possibility of salvaging her?

A. Oh, yes, we did. We went down to the engine room, and there we saw that the starboard boiler had been pierced and the engine appeared to be damaged—the engine itself; and besides, the engine room was full of water, you see, and all through the night the settler tanks had been burning—in fact,

(Deposition of Hans O. Matthiesen.)

burning so intensely that it lit up the whole sky, you know.

Q. During the night—that is, the night of December 11th and the early morning during the darkness hours of December 12th—was the “Lahaina” afire as you mentioned?

A. Afire from stem to stern, except—everything from the forecastle head, all the holds were burning, the wood, the sweat battens and the ceilings in between the decks were burning, the officers’ house and the bridge and No. 4 hold, No. 5 and the crew’s quarters; then of course forward under the fore-castle head the paint locker was burning fiercely.

Q. And about how far from the “Lahaina” was the lifeboat while you stayed off watching her burn there?

A. From one to two miles, I should say. We sailed at first, while there was wind, up and down, and with the “Lahaina” drifting toward the west we kept on following her until the wind died, and then of course we had to row to follow her.

Q. Did you see the “Lahaina” go down?

A. Yes, sir.

Q. And when did she sink then, approximately?

A. Approximately 11:30 on December 12th.

Q. 11:30? A. A.M.

Q. A.M.? A. A.M., yes.

Q. And about how far off of her were you and the other men in the lifeboat at the time she actually went down?

(Deposition of Hans O. Matthiesen.)

A. When she went down, I should say 750 yards.

Q. Then except for the effect of wind and current on the "Lahaina" from the time she was first attacked by the submarine until she sank, she was in the same location as you mentioned?

A. Yes, that is correct, yes.

Q. And of course the exact amount that she had drifted during that time, or changed her position, you could only roughly estimate? Is that correct?

A. Yes. Well, you could determine that within a few miles, of course—not too precise at any time.

Q. Yes, but it would be just the effect of wind and current that would have changed her position?

A. Yes, that is right.

Q. I don't know whether I understood you correctly on it, whether the "Lahaina" sank at 11:30 or 12:30. I have a note here of 12:30, Captain, p.m., and I don't know whether that is correct or not.

A. It might have been 12:30—it might have been 12:30.

Q. Yes. A. That, of course, is true.

Q. If you made a memorandum——

A. If we made a [11] memorandum of that at the time after we returned, then I am inclined to think that that is more correct.

Q. Yes. A. Sure.

Q. But it might have been at 12:30 p.m. on December 12th? A. That is right.

Q. Instead of 11:30 a.m. on December 12th, 1941? A. That is correct, yes.

(Deposition of Hans O. Matthiesen.)

Q. Now was any one of the officers or crew injured as a result of the submarine attack on the "Lahaina"? Did any of them suffer any personal injuries as a result of the attack on the "Lahaina"?

A. Not directly, no, if you mean were they wounded.

Q. That is what I mean.

A. From the shell fire?

Q. Yes. A. No.

Q. I will put it this way, Captain: When they got in the lifeboat they had suffered no injury?

A. No injury by shell shrapnel or by shell fragments, or anything like that, no.

Q. And none of them had injured themselves in leaving? A. In leaving the vessel, no.

Q. And then after the "Lahaina" sank, what became of the lifeboat that you fellows were in?

A. Well after the "Lahaina" went down, of course we were becalmed for a while, and two days we had to row, and then we got westerly wind—in other words, wind from the direction toward which we wanted to go—so we hoisted sail and stood south—— [12]

Q. That would be an easterly wind, then, wouldn't it, Captain?

A. No, a westerly wind. We wanted to go to Hawaii, so it was a westerly wind that we had.

Q. It was a wind blowing from——

A. From the west.

Q. All right.

(Deposition of Hans O. Matthiesen.)

A. And that is the direction in which we wanted to go, you see, so we had a head wind directly against us, you know.

Q. Yes.

A. So we had to sail south in order to get into the strong trade winds, which of course we would have; and that lasted two days, and then in about latitude twenty-five we struck the northeasterly trades and easterly trades, and from them on of course we really traveled; we sailed for all she was worth, you know, night and day, before it. We had a strong northeast and easterly wind; in fact, toward the last, as we got to the Hawaiian Islands, it got so strong that we had to take and reef our sail. In other words, the little sail we had, we had to lower down and only hoist it up halfway, and still made more time than we did previously with the entire sail.

Q. And did the lifeboat reach land in the Hawaiian Islands?

A. Yes, we landed on the 21st of December at Sprecklesville on Maui.

Q. And did any of the men lose their lives in the course of this trip?

A. Yes.

Q. In the lifeboat?

Mr. Charles: I object to the question on the ground that the complaint does not seek recovery for loss of life or [13] loss of personal effects of any of the crew members, but only seeks recovery for loss of the ship, I believe.

Mr. Henry: That is true, Mr. Charles. I am simply trying to get a little bit of the incidental

(Deposition of Hans O. Matthiesen.)

narrative here as to what the experiences were afterwards, and if there was no further enemy action that they experienced while they were in the lifeboat.

Mr. Charles: I don't think that such evidence has any bearing on the issues of the complaint.

Q. (By Mr. Henry): Well, I will ask that you answer the question, Captain, whether any of the men in the lifeboat lost their lives while you were in the lifeboat and before you reached shore?

A. Yes, we lost four men.

Q. And how many men were there in the lifeboat at the start? A. Thirty-four men.

Q. And that was the full complement of the vessel? A. The full complement, yes.

Q. And do you remember the names of the men who had lost their lives or failed to reach shore?

Mr. Charles: I make the same objection.

Mr. Henry: Yes, and I understand it extends clear through this line of questioning here, Mr. Charles.

A. Yes. Del Tinto, oiler.

Q. Is that Concezio Del Tinto?

A. Yes. And then we have Moore, second cook.

Q. Hilliard Moore?

A. Hilliard—that is right—second cook. And then we have Lundquist, able seaman.

Q. That is Albert Lundquist?

A. Albert, yes, that is correct. Let's see, now, what did we have? Did we mention Freedman?

(Deposition of Hans O. Matthiesen.)

Q. Freedman you didn't mention.

A. No. He was an able seaman too.

Q. Herman Freedman?

A. Herman Freedman, yes.

Q. And with the exception of those four that you have mentioned, all of you landed?

A. All of us landed, yes.

Q. As survivors? A. Yes.

Q. When you said it was December 12th the vessel sank, that was December 12th, 1941?

A. 1941.

Q. The day following the original attack?

A. Yes, sir, that's right.

Mr. Henry: That is all.

Cross-Examination

By Mr. Charles:

Q. Captain, very roughly about how many miles from the Hawaiian Islands were you at the time of the submarine attack?

A. On a direct line?

Q. Yes. A. To the nearest point?

Q. Yes.

A. Oh, I should say—I'm estimating now—650 to 700 miles.

Q. And do you recall approximately what the heading of your [15] ship was at the time of the attack?

A. The heading of the ship at the time of the attack—well, I will have to generalize.

Q. That is all right.

(Deposition of Hans O. Matthiesen.)

A. I don't even remember the exact course.

Q. That is sufficient.

A. But the heading must have been around seventy degrees true.

Q. Were you able to save your log books?

A. No, sir.

Q. Did you save any records at all, Captain—any of your ship's records?

A. No, sir.

Q. Did you have your own diary?

A. Yes.

Q. Of the events?

A. I made up a ship's diary; that is, a diary for the lifeboat.

Q. I see. And in that diary did you include any statement as to the location of the ship where she was sunk?

A. I did, yes.

Q. Did you include also her course?

A. Not her course—yes, I did, insofar as it is stated that she was on a voyage from Ahukini to San Francisco.

Q. Yes. And do you have that record with you, Captain, at this time?

A. I haven't it with me, no, but it could be produced.

Q. Is it in your own possession or in the company's possession?

A. It is in my possession, yes.

Q. And prior to the time that your ship was attacked did you receive any Navy orders as to the destination of your ship? [16]

A. Yes, twice.

(Deposition of Hans O. Matthiesen.)

Q. And what was the contents of those orders?

A. The first time was a dispatch in code from the 14th Naval District, the commandant of the 14th Naval District, directing all United States ships to proceed to the nearest United States or friendly port, and of course at that time that is the order I carried out.

Q. That is, you carried it out after your ship was sunk, in coming back to the Islands, you mean?

A. No, no, I was on the way from Ahukini to San Francisco. On about the 8th of December I received this message from the 14th Naval District, I believe, directing me, as I said, to proceed to the nearest friendly or United States port.

Q. And you interpreted that to mean San Francisco, rather than return to the Islands?

A. No, I interpreted that to mean Honolulu or the nearest Hawaiian port.

Q. Oh, I see.

A. So I proceeded to Honolulu.

Q. That is, your ship was actually headed to Honolulu at the time of the attack?

A. No, sir, it was not. As I mentioned previously, I had received two orders.

Q. Will you go ahead and tell me about the other order?

A. All right. So the next day I received a dispatch from the commandant of this naval district here on the west coast, San Francisco, which was the 12th.

Q. Yes.

(Deposition of Hans O. Matthiesen.)

A. And, by the way, the Hawaiian area is the 14th. I made a mistake—— [17]

Mr. Henry: You mentioned the 14th.

A. Oh, did I mention the 14th?

Mr. Henry: Yes.

A. Fine—O. K. So then I received an order from the 12th Naval District, the commandant of the 12th Naval District, to proceed at the utmost speed to San Francisco, toward Point Conception. I was mentioned in the dispatch at that time; I was mentioned definitely—addressed to the “Lahaina” and three more ships, which I have forgotten. One of them was the “Liola,” I believe. So upon receipt of that order I turned around again, of course and headed toward Point Conception as ordered.

Q. (By Mr. Charles): On what date did you say that order was received—the second one?

A. That order was received I believe on the 9th—the morning of the 9th.

Q. And then did you receive any further orders, Captain?

A. After that I received no orders, no.

Q. And you kept on your course towards San Francisco?

A. I kept on my course towards San Francisco, yes.

Q. Toward Point Conception?

A. Toward Point Conception, yes.

Q. And you don't remember just what the wording of that order was, do you? A. Yes.

Q. Did it say “Go to Point Conception”?

(Deposition of Hans O. Matthiesen.)

A. I believe—I remember the order very well. It read—not very well; I should not say very well, but I will do my [18] best. It read: “From Commandant 12th Naval District to SS ‘Lahaina,’ ‘Liola,’” and two other ships which I have forgotten—the name of which I have forgotten——

Q. Yes.

A. “Proceed at utmost speed to San Francisco on a course toward Point Conception.” Signed, “Commandant, 12.” It was a very short message, I remember.

Q. And you acted on that and continued toward——

A. Oh, yes, yes.

Q. (Continuing): ——toward Point Conception from then until the time of the attack? Is that right?

A. Yes, sir.

Q. And if I get the whole statement that you made correct, you first of all got the message from the 14th Naval District at Honolulu?

A. Yes.

Q. Which directed you to return to Honolulu?

A. Yes.

Q. And you then turned your ship around and started back toward Honolulu? Is that correct?

(The witness nods his head affirmatively.)

Mr. Henry: Just say “Yes” so the reporter can hear you.

A. Yes, sir. Excuse me.

(Deposition of Hans O. Matthiesen.)

Q. And about how long were you headed toward Honolulu before you got that second message on the 8th of December? A. How long?

Q. Just approximately.

A. All right. Approximately eighteen hours from—yes, approximately eighteen hours, that is correct.

Q. And then when you got this next order you swung your [19] ship around? A. Yes.

Q. And started back immediately toward San Francisco?

A. Yes—that is, headed back toward Point Conception.

Q. And did your radio continue in operation all the time until the submarine attack?

A. Oh, yes. In fact, we were in operation up to the time—we sent out an S.O.S., which was intercepted, by the way, by radio at Honolulu, and of course after that we didn't send any more, but we were in operation with our radio, not at all times but during the times that the operator was to be on watch. Being a one operator ship, he had certain watches to stand, and of course those watches he stood, and the watches he stood were known, of course, to the Navy Department.

Q. Yes. Did you hear afterwards, by any chance, whether any further messages had been directed towards your ship which you didn't pick up?

A. No, sir, I hadn't—

Q. As far as you know, there were none?

A. No, not as far as I know.

(Deposition of Hans O. Matthiesen.)

Q. On that voyage on which your ship was lost, Captain, was your crew under articles?

A. Under coastwise articles.

Q. Under coastwise articles? A. Yes.

Q. And do those articles state the ports of call in them? A. Oh, yes.

Q. And did they say "voyage from Honolulu to the United States and return," or how were they worded, do you know? [20]

A. No, we enumerated all the Hawaiian Islands, you see—"on a voyage from San Francisco to the Hawaiian Islands"—I don't really remember how the exact wording was. I would have to refresh my memory first on that, you know.

Q. Yes. Do you remember whether there were any ports mentioned there other than ports in the Hawaiian Islands and San Francisco?

A. No, there were no other ports mentioned in that at all.

Q. And was the ship at any time destined to go to any other port—any other ports other than the Islands and San Francisco? A. No, no.

Q. And then you never received any messages or directions from the company or anyone else to proceed other than to San Francisco?

A. No, sir.

Q. And Point Conception? A. No.

Q. You mentioned that your ship had about 1000 tons of scrap iron, I think you said, on board?

A. Yes.

(Deposition of Hans O. Matthiesen.)

Q. Was that carried under bills of lading, do you recall?

A. Yes, it was; it was cargo, definitely.

Q. Those were Matson Line bills of lading, I assume? A. Yes.

Q. And do you remember what the port of destination of the scrap iron was?

A. San Francisco.

Q. Was your ship under charter at the time, Captain? A. Under charter, no, sir.

Q. The ship was owned by Matson?

A. Owned by the Matson [21] Navigation Company, yes, and running for the Matson Navigation Company.

Q. And it had not been requisitioned prior to the time of its loss? A. No, sir.

Q. Let's see—did I understand you to say that you did go back on the ship after she had been shelled by the Japanese?

A. That's correct, yes.

Q. And how long were you on the ship approximately?

A. Approximately forty-five minutes, I should judge.

Q. Did you alone go back? A. No.

Q. Or did some of the men go with you?

A. Now, let me see—the third assistant engineer, the first assistant engineer, the second officer, myself and two or three others that I don't really remember, whose names I can't recall. I am under the impression there were about six or seven men that went back on the ship.

(Deposition of Hans O. Matthiesen.)

Q. At the time you went back on, Captain, was she low in the water at that time?

A. Yes, she carried a tremendous list to port—wait a minute—is it port or starboard—no, it is starboard, that is right.

Q. But her decks were not awash at that time, were they? A. No.

Q. Was there any fire on the ship at that time?

A. The fire was still burning, yes, in between decks and in the starboard—that is, in the midship house around the engine room fiddley—that is, around the stack casing—the [22] stack casing and in that fiddley, in that particular location; and the fire was eating from there into the midship house on the starboard side. In fact, while we were on the ship a coil of rope that was used to lower the starboard lifeboat was catching afire; it was burning at the time.

Q. And did you make any effort at that time to stop the fire?

A. No, it was impossible to have a good footing on the ship, and it was taking——

Q. More of a list?

A. More and more of a list, yes, it was increasing all the time, you see, and of course, the engine room being full of water, there was no chance of getting power on the pumps, and of course with buckets—well, there were none, you know, at the time; and, in fact, after we looked at the engine room then we figured, “Well, there isn’t much hope.”

(Deposition of Hans O. Matthiesen.)

Q. How high was the water in the engine room?

A. Right up—right up to the fiddley, you know.

Q. It was up over the fires?

A. Oh, it was definitely over the fires. The entire engine room was under water. The engine itself and the boilers were submerged, you see.

Q. Did the boilers explode?

A. No, no. The starboard boiler received a hit, and of course the steam escaped; and the port boiler did not explode, and I couldn't determine whether it had been damaged. In fact—that is, I don't know whether it had been damaged or not, but the engine was, though— [23] the engine itself, you see, received a hit, so that put the engine out of commission.

Q. And did the other men stay on as long as you did—forty-five minutes or so?

A. Approximately so, yes.

Q. And did you open any sea cocks or take any other steps of that kind?

A. No, no. You see, we couldn't get down into the bottom of the engine room, you know, being full of water, you see; that was out of the question.

Q. And did the fire continue, do you know, Captain, until the ship sank?

A. She was smoking up until the ship went down. Not much smoke, that is true, but she was smoking, and the upper structure in the midship house was smoking up to the last.

(Deposition of Hans O. Matthiesen.)

Q. Did you have any pump on the ship that worked by a donkey boiler or any auxiliary apparatus? A. No, sir.

Q. Did you submit a report, Captain, to the U. S. Coast Guard, the Bureau of Marine Inspection and Navigation, regarding the loss?

A. I certainly did at the time; that is, in Honolulu I made that report.

Q. I see. And when you got back to San Francisco did you make any entry in the Customs House as to the place of loss and time of loss of your ship?

A. That was done in Honolulu.

Q. In Honolulu? A. In Honolulu, yes.

Q. Was Honolulu the home port of the ship?

A. No, sir, it was not, but I believe the law reads that you are to make known the loss of any ship at the first port at [24] which the commanding officer or the master arrives, and that was done in due form.

Q. Did you make any reports, other reports of the loss, Captain—Written reports, that is?

A. Written reports—let's see—what written reports did we make? We made it to the United States inspectors. I made out a report; I wrote a statement. That is the statement there (indicating).

Mr. Charles: Referring to a statement that counsel has.

A. Yes, and that is about all the reports I made.

Mr. Charles: I think that is all.

(Deposition of Hans O. Matthiesen.)

Redirect Examination:

By Mr. Henry:

Q. I think I neglected to ask you, Captain, whether the "Lahaina" had any armament or defense guns of any kind at the time?

A. No, sir, none whatever.

Q. I was just looking at this statement that you made reference to there about the written reports.

A. Yes.

Mr. Henry: I have, Mr. Charles, a photostatic copy of statement signed by H. O. Matthiesen on February 20th, 1942 (handing photostat to Mr. Charles).

Q. I note there it refers to December 7th several times, the day of Pearl Harbor, in the afternoon, that you received your first message. Is that correct? I was a little confused on the dates there, Captain—whether you said December 8th or [25] December 7th.

A. If I made that statement in this particular piece of paper, then I am inclined to think that this December 7th is correct.

Q. So that if you received your first instruction or order——

A. On December 7th, then I received the second order on December 8th.

Q. I see. 1941? A. Yes.

Mr. Henry: That is all.

(Deposition of Hans O. Matthiesen.)

Recross-Examination

By Mr. Charles:

Q. Captain, had you received any naval instructions, or instructions from any other source, with respect to what you were to do in the event that you were accosted by an enemy craft?

A. Did we receive any instructions by radio, do you mean, Mr. Charles?

Q. Well, I meant generally, whether by written instructions or radio or oral, by word of mouth.

A. Let's see, now—we had no instructions of that nature to my knowledge, no. I had instructions that in case of imminent capture, to destroy any codes that were on the ship—any secret codes of any nature whatever, to destroy them, which I did at the time; but I had no instructions as to the procedure to follow if capture by the enemy were imminent in case of war. At that time we had not received any such thing yet. You see, it was before the [26] war when I left Ahukini, and war broke out while the ship was on the voyage from that point to San Francisco, you see.

Q. The only things you had were just the codes?

A. The codes, that is all.

Q. Now at the time you swung your ship there, or hove to, had you been able to identify the submarine, as to whether she was a Japanese?

A. Not at that time, no. We didn't know whether she was Japanese or not. We knew that she was firing at us—that being enough for us to stop the

(Deposition of Hans O. Matthiesen.)

ship, you see. A warning shot across the bow, in any man's language means "Stop your ship."

Q. And did you assume that the submarine perhaps was a United States submarine?

A. No, sir, I didn't assume any such thing. I didn't know for a moment just what it was, but it was best to stop. That idea I had in mind. Naturally, when a man of war fires on a merchant ship a warning shot across the bow, that can only mean that one thing, to stop; and whether she is Japanese or American or any other nationality, that is what it means, in my estimation.

Q. You felt that that was the best thing to do?

A. I think so, yes.

Q. For the safety of your men?

A. For the safety of the men and the ship as well, until the nature of his intentions was established, you see. Of course, there was no doubt in my mind at the time that he was a Japanese, because who else would fire on us? Our own submarines certainly would [27] not fire on us; that is a certainty. I should not say that I knew he was a Japanese; I knew that he was an enemy, you see.

Q. Yes. You were flying the American flag?

A. Oh, yes, sure.

Q. And it was clear so that he could see?

A. It was clear—oh, beautiful daylight and beautiful weather; but whether he was Japanese or German, that of course I didn't know.

Q. Was there any signal—— A. No.

(Deposition of Hans O. Matthiesen.)

Q. He didn't signal to you before he shot?

A. No, sir, no signal whatever.

Q. No flag signal? A. No, sir.

Q. No whistle signal?

A. No, nothing. He just appeared on the surface and opened up.

Q. Well, in the international code there are provisions for the signaling of a vessel?

A. Oh, yes. A letter "K," for instance, "Stop your vessel immediately or I shall fire upon you." You see, that letter indicates right then and there that if you don't stop, the man of war will fire.

Q. And that is on a flag that is hoisted?

A. That is hoisted in the air.

Q. By the accosting craft?

A. Yes, that is right.

Q. And did you see any such flag on the submarine? A. No, sir.

Q. Do you remember whether you directed the S.O.S. to be sent before you hove to, or afterwards?

A. Yes, sir, we were all ready for that. We had a regular system that we had the positions laid out in half hour intervals all through the day and all through the night, and all the radio operator had to do—that is, when he broadcast the S.O.S. and the ship's position, he looked at his own time, the ship's time and the position on the chart, you see, at that same time, and that is the way we would work it up for the watch ahead all the time, you know. Every time the officer on watch leaves the bridge, that is

(Deposition of Hans O. Matthiesen.)

the first thing he would do; he would give the radio operator the positions of the ship for the next four hours ahead, under my supervision. The minute the war broke out, that is the procedure which we instituted, you see.

Q. I see. And did the S.O.S. message say anything about the enemy attacking, do you know?

A. Let's see, now—I believe it did, yes.

Q. I suppose, Captain, the engines were shut down prior to the time when you abandoned ship?

A. Yes.

Q. Did you give any directions to the——

A. I stopped the ship, yes.

Q. You stopped the ship? A. Yes.

Q. Did you give any directions to the engineers to secure the fires, or any other directions?

A. No. I gave orders, when he kept on shelling, to abandon ship. I didn't tell the engineers to secure anything down below, because they were [29] forced to leave the engine room because the starboard boiler was pierced by a shell hit. You couldn't very well shut anything down; in fact, the——

Q. Did the engines operate at all on the other boiler, do you know?

A. Could the engine be operated on one boiler?

Q. Yes.

A. Oh, yes, it could be under normal conditions, certainly, oh, yes.

(Deposition of Hans O. Matthiesen.)

Q. Did the shell—was the shell that pierced the boiler received after you turned around and hove to, or before, do you recall?

A. It was before.

Q. It was before? A. Yes.

Q. Was that the first shell?

A. That was the third shell.

Q. The third shell?

A. Yes. And it went through—no, wait a minute—no. The fourth, I believe it was—well, the fourth—let's say the fourth—oh, the fourth or fifth shell. Now, I don't really recall. The first hit, of course, was in the machine shop, and what damage she did outside of the machine shop I don't know.

Q. Was the ship out of operation before you turned around and hove to, Captain, do you recall?

A. Out of operation, no, sir—no.

Q. Were the engines in good operating condition prior to the time of the attack?

A. Prior to the time of the attack, yes, in good condition, yes.

Q. Did you have on board any instructions such as those [30] later issued, which gave you any directions as to zig-zagging or any other operations to endeavor to avoid attack?

A. None whatever, no.

Mr. Charles: I think that is all.

Mr. Henry: I think, Mr. Charles, I will ask that this photostatic copy of this statement be marked as "Plaintiff's Exhibit 1 for identification." I could

(Deposition of Hans O. Matthiesen.)

probably get the original. This is a photostat. Would you have any objection to the photostat being used as though it were the original?

Mr. Charles: Where is the original?

Mr. Henry: I don't know. It may be in the office of the company.

Mr. Charles: I don't think—I think this would be—this is the original of that report?

The Witness: The original?

Mr. Henry: It is a photostatic copy.

Mr. Charles: A photostatic copy of the statement that you signed?

A. Yes, sir, that is my signature on there (indicating).

Mr. Charles: All right. That is all right.

(Said photostat marked "Plaintiff's Exhibit No. 1 for identification.")

Redirect Examination

By Mr. Henry:

Q. Captain, how much time, if you can make an estimate of it, expired from the time that the first shell of the enemy submarine was shot across your bow and the subsequent shooting by the submarine—that is, the next shot that was fired by the submarine?

A. Well, it went pretty fast.

Q. Well, could you make an estimate of the minutes—some rough estimate?

(Deposition of Hans O. Matthiesen.)

A. Oh, I should say one shot a minute for the first series of about twelve or fifteen shots, I should say.

Q. But what I am getting at is, from the time that this first shot was fired across your bow——

A. Yes.

Q. (Continuing): ——up until the next shot came from the submarine, how long a period of time, about, was it?

A. How long a period of time? Oh, that is difficult to say now. I am judging about forty-five seconds.

Q. So that there was no time in the sense of a great number of minutes that elapsed from the shot across your bow until the shots were directed against the vessel itself? A. Oh, no.

Q. I see.

A. Oh, no, that was a continuous affair, you know; there was one shell coming after another, you see.

Q. So there was no chance for those on board to seek safety between the shot across the bow and the next shot that was received from the submarine?

A. Oh, no, they were pretty much exposed.

Q. Well, did they follow in the same succession—that is, [32] was there a greater interval between the shot across your bow and the next shot than there was between the second shot and the third shot from the submarine, or did they come about the same? A. About the same.

Q. I see.

(Deposition of Hans O. Matthiesen.)

A. About the same. Of course, the firing took place in two series, you see. The first time——

Q. Was at this 1500 yard distance?

A. Yes, at the 1500 yard range he fired, I should judge, fifteen shots or so, and they came pretty close together, you see; and then, of course, he steamed across the bow of the “Lahaina” and bore down on the “Laihana” and then backed up against the midship section of the port side, and the rest of the shots he fired into the engine room, you see.

Q. From the port side?

A. From the port side, at very close range.

Q. I see.

A. I should say about 150 yards away.

Mr. Henry: I see. I think that is all, Captain.

Re-Recross-Examination

By Mr. Charles:

Q. Just one other question, Captain. Was there any investigation conducted by the Coast Guard, or by the Bureau of Marine Inspection and Navigation? A. There was.

Q. Concerning the casualties?

A. Concerning the casualties? [33]

Q. Yes.

A. Yes, sir, there was here in San Francisco.

Q. In San Francisco? A. Yes.

Q. About what month was that, do you remember?

A. That was in February—February or March, 1942.

Q. February or March, 1942?

(Deposition of Hans O. Matthiesen.)

A. Yes. I forget the exact date, you see.

Q. There were some proceedings taken against you or taken on your license in connection with the casualties?

A. No, no.

Mr. Charles: I think that is all.

A. Since I reported it, you know, there was no proceedings of any nature or any kind.

Re-Redirect Examination

By Mr. Henry:

Q. Was that proceeding that Mr. Charles asked you about here in San Francisco, as to the loss of life?

A. It was in connection with the loss of life of these four men.

Q. And that was far afterwards in the lifeboat?

A. Yes, from the time that we left the "Lahaina" until we reached the shore of Hawaii.

Q. Was there any investigation of the sinking of the "Lahaina" itself in that hearing?

A. No, there was no investigation of that. That was done in Honolulu. [34]

Q. So this was the loss of life in the lifeboat—the hearing in San Francisco?

A. That is correct, yes.

Mr. Henry: That is all.

Re-Recross-Examination

By Mr. Charles:

Q. There was a hearing in Honolulu regarding the loss of the ship itself?

A. Yes.

(Deposition of Hans O. Matthiesen.)

Q. But there were no proceedings taken against you in that connection, were there, Captain, at Honolulu?

A. You mean because of the loss of the ship or——

Q. Yes. A. No, none whatever.

Mr. Charles: That is all.

The Witness: I hope not.

Mr. Henry: That is all. [35]

PLAINTIFF'S EXHIBIT No. 1
FOR IDENTIFICATON

To whom it may concern:

I, Hans O. Matthiesen, Master of the American steamer "Lahaina" official number 220763, make the following statement in connection with the sinking of the SS Lahaina.

The SS Lahaina departed from Ahukini, Kauai, T. H. on December 4, 1941 with 1000 tons of cargo for San Francisco. On December 7, 1941 late in the afternoon I received a message in code from the 14th Naval District directing all vessels in the Pacific area to proceed immediately to nearest United States or friendly port. I changed course at once, heading for Honolulu and proceeding at about 11 knots. The following morning a Naval Patrol plane was sighted. I had the ship's numbers hoisted and the plane, circling the vessel, dipped his wings in recognition of our signal and flew away in the direction of Oahu. That same morn-

ing, at about 11:00 a.m., December 8, 1941, word was received from the 12th Naval District to proceed at top speed to San Francisco toward Pt. Conception. The course was changed immediately to comply with this order.

On December 11, 1941 at 1:40 p.m. L.S.T. in Latitude 27° 35' N, Longitude 147° 25' W, a submarine was sighted, firing across the vessel's bow from a 1500 yard range. The vessel was stopped at once and hove to, but the enemy kept on firing. In the meantime an S.O.S. was sent out by the radio operator. The signal for abandoning ship was then given and all hands proceeded to #2 lifeboat, #1 boat having been holed by shell fragments. When the lifeboat was clear of the ship with all hands accounted for, the enemy submarine was sighted crossing the bow of the Lahaina and coming close aboard on the port side to shell the engine room. While doing so the lifeboat was approximately one hundred yards from the submarine, recognizing the crew as Japanese by their appearance and by the commands that were given. While shelling the engine room from point blank range on the port side the Japanese kept the lifeboat under constant observation and had a machine gun assembled on the cigarette deck, covering the lifeboat. When the shelling was finished, about 25 shots in all, of which 12 were hits, the Japanese submarine steamed away on the surface in a northeasterly direction at 2:10 p.m.

The SS Lahaina sank the next day at 12:30 p.m., December 12, 1941, after an attempt to salvage her had to be given up.

Respectfully,

/s/ H. O. MATTHIESEN,
Master SS Lahaina.

San Francisco, February 20, 1942.

This statement was signed in our presence:

JAS. P. RASMUSSEN,
Witness.

C. B. ALEXANDER,
Witness.

Pltff's Ex. #1 for Iden. R. R. Roberson, Reporter.

State of California,
Northern District of California,
City and County of San Francisco—ss.

I hereby certify that on the 21st day of June, 1945, at 11:15 o'clock a.m., before me, Ella Cook Kelly, a Notary Public in and for the City and County of San Francisco, State of California, at the office of Messrs. Hall, Henry & Oliver, 626 Matson Building, 215 Market Street, San Francisco, California, personally appeared pursuant to oral stipulation between counsel for the respective parties, Hans O. Matthiesen, a witness called on behalf of the plaintiff herein, and Messrs. Hall, Henry & Oliver, represented by Lyman Henry, Esquire, appeared as attorneys for the plaintiff; and Messrs. Lillick, Geary, Olson & Charles, represented by

Allan E. Charles, Esquire, appeared as attorneys for the defendant; and the said Hans O. Matthiesen being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the deposition hereto annexed.

And I further certify that the said deposition was then and there recorded stenographically by R. R. Roberson, a competent official and disinterested shorthand reporter, appointed by me for the purpose and acting under my direction and personal supervision, and was transcribed by him, and by stipulation between counsel for the respective parties the reading and signing of the deposition by the witness were waived.

And I further certify that the said deposition has been [36] retained by me for the purpose of securely sealing it in an envelope and directing the same to the Clerk of the Court as required by law.

And I further certify that the exhibit hereto attached and marked "Plaintiff's Exhibit No. 1 for Identification," is the exhibit referred to and used in connection with the deposition of said witness.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause; I further certify that I am not a relative or employee of or attorney or counsel for any of the parties, nor a relative or employee of such attorney or counsel, nor financially interested in the action.

In Testimony Whereof, I have hereunto set my hand and official seal at the City and County of

San Francisco, State of California, this 2nd day of July, A. D. 1945.

[Seal] /s/ ELLA COOK KELLY,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Dec. 23, 1948.

[Endorsed]: Filed July 3, 1945. [37]

In the Southern Division of the United States
District Court for the Northern District of
California

Civil Action No. 24575-G

MATSON NAVIGATION CO.,

Plaintiff,

against

WAR DAMAGE CORPORATION,

Defendant.

DEPOSITIONS OF GEORGE INSELMAN, M.
M. PEASE, HOWARD W. CANN AND
HAROLD L. WAYNE

Depositions of George Inselman, M. M. Pease, Howard W. Cann and Harold L. Wayne, taken on behalf of War Damage Corporation, pursuant to stipulation of counsel for the respective parties as to time and place, at No. 80 Maiden Lane, City and State of New York, on the 14th day of March, 1947, beginning at 11 o'clock a.m. and concluded on the same day.

Appearances:

Messrs. Hall, Henry & Oliver, 215 Market St., San Francisco, Cal., by Lyman Henry, Esq., of Counsel, for Plaintiff.

Messrs. Lillick, Geary, Olson & Charles, 311 California St., San Francisco, Cal., by Allen E. Charles, Esq., of Counsel, for Defendant.

It Is Stipulated and Agreed between counsel for the respective parties that reading, signing and filing of the within depositions are waived, and that the witnesses may be sworn by a Notary Public of the State of New York with the same force and effect as though sworn by a Judge of this Court.

All objections except as to the form of question are reserved for the trial of the action.

GEORGE INSELMAN

being duly sworn, testified as follows:

Direct Examination

By Mr. Charles:

Q. Mr. Inselman, your full name is George Inselman? A. Yes.

Q. What is your address?

A. At No. One Fifth Avenue.

Q. With what firm are you associated?

A. The Marine Office of America.

Q. In what capacity?

A. Ocean cargo underwriters.

Q. May I ask how long you have been in the insurance business? A. Thirty-one years. [2*]

*Page numbering appearing at top of page of original Reporter's Transcript.

(Deposition of George Inselman.)

Q. I wonder if you could tell us briefly what experience you have had in the insurance business, that is, the types of insurance work that you have done.

A. I was head of the Claims Department of the British & Foreign Marine Continental Company in New York, for fifteen years, during which time I dealt with ocean cargo losses, ocean hull losses, inland cargo losses and inland wet losses, so far as lighters and yachts and tugs. Thereafter I entered the underwriting field with the British & Foreign and served in that capacity until 1938, when I went with the Fire Association of Philadelphia.

Q. Just before we leave that first position you mentioned, what type of underwriting did you do?

A. All classes of marine underwriting; I was Assistant United States Manager of the British & Foreign when I left that office at its consolidation; also Vice-President of American-Foreign, a subsidiary of the British-Foreign, and director of the American-Foreign.

Q. And then you said in 1938 you entered the Fire Association of Philadelphia?

A. In 1938 I entered the Fire Association of Philadelphia as Marine General Agent, advancing through six or seven years to Marine Vice-President. During that period I did the same class of underwriting, including inland dry underwriting. [3]

Q. And during that period were you engaged in business in New York or Philadelphia?

(Deposition of George Inselman.)

A. Well, in New York only to the extent that we made frequent trips here to attend meetings and things of that character in connection with our business.

Q. How long did your association with that firm continue? A. Up till March 1, 1945.

Q. What did you do then?

A. I went with the Marine Office of America as ocean cargo underwriter.

Q. And you have continued as such an underwriter to date?

A. That is right, that is my capacity at the present time.

Q. During that period of time have you become familiar with the usages and customs of the insurance business? A. Yes.

Q. And you have a knowledge of the terminology used in the insurance business? A. Yes.

Q. May I ask, Mr. Inselman, whether the phrase "property in transit" is employed in the ocean marine insurance business? [4]

Mr. Henry: I object to the question as being incompetent, irrelevant and immaterial, calling for the conclusion of the witness, and an attempt to interpret legislation by reference to matters that are not relevant, and a part of the legislative history of the statute involved in this litigation.

Q. You may answer.

A. The term "property in transit" as I understand it in our business, applies to goods and merchandise, things capable of being conveyed. In the

(Deposition of George Inselman.)

pending ocean cargo policies we refer to goods and merchandise; several clauses speak of property, use the general term property, always applies to goods and merchandise.

Q. Are the words "in transit" used in connection with hulls?

A. I should say no, not in my experience.

Q. Could you tell us from your experience all the different classes of property that you can think of which are used in connection with the term "in transit"?

Mr. Henry: May it be understood that my objection and motion before made include in the objection that there has been no proper foundation laid as to this entire line of interrogation, without my repeating the objection each time. [5]

Mr. Charles: Yes, that is correct. With reference to the no foundation, what do you have in mind in that connection that might go to the form of the question?

Mr. Henry: I am raising the objection for the reason that I want to be certain that in spite of the fact that our objections are reserved in all matters except as to the form of the question, that there should be no misunderstanding and so that I would place you on notice here of my position, and if any of these questions on the technical consideration are to be considered as objectionable relating to the form of the question, I want it registered at this time.

(Deposition of George Inselman.)

Q. Let me ask you this, Mr. Inselman: Have the terms "in transit" been used in the marine insurance business for any length of time, or has the usage of those terms been rather recent?

A. The term "in transit" is used in connection with the insurance of goods and merchandise. It appears in the warehouse-to-warehouse clause.

Q. Do you know how long, as far as your own knowledge is concerned, those terms have been so used? [6]

A. I would answer that in this way, that the warehouse-to-warehouse clause is one established and adopted by the Insurance Institute—I think early in the thirties, I am not sure about that—but in connection with our insurance, the insurance of foods and cargo——

Mr. Henry: Ocean cargo.

A. (Continuing): ——in ocean—the practice has always been employed, and the policy only covers it in course of transit, even though the word "transit" does not appear in the contract.

Q. I want to go back just a moment; what I wanted to bring out if possible is whether the words themselves "in transit" have been familiar words in the insurance business for only a brief period of time or have they been used during a large part, and if so, about how much of the time that you have been engaged in the insurance business?

A. I think the word "transit" is synonymous with the insurance of goods and merchandise under

(Deposition of George Inselman.)

ocean policies. That has been my experience, whether implied or express.

Q. About how long a period of time does your experience with those terms go back?

A. From the very beginning.

Q. Have you ever known the term "in transit" to be [7] used in connection with insurance of a ship?

A. No. I might qualify that, if I may, Mr. Charles, by saying that the word "transit" might apply in a case where they are shipping—I suppose a yacht might be considered as a ship; we have had occasion when we had insurance on tugs and steam yachts on deck, and of course we would insure those under the cargo form of policy, just as we would merchandise on the ship, and in that connection the word "transit" of course might appear in the policy where it related to that particular thing.

Q. But that is when a yacht is being carried as a cargo and not when a yacht is being navigated.

A. No, not when she is under way herself.

Q. Do you know, Mr. Inselman, whether war risk insurance on hulls was available during the year 1941 in commercial service?

A. I can answer that by saying that I wrote some war risk insurance on hulls at that time, in 1941.

(Deposition of George Inselman.)

Cross-Examination

By Mr. Henry:

Q. Mr. Inselman, you mentioned that the words "in transit" or the word "transit" although not appearing, frequently is implied in so-called cargo policies with a warehouse-to-warehouse clause, is that correct? [8]

A. That is correct.

Q. Who implies that, Mr. Inselman?

A. Well, it is usage, I can't quote the citations, but ocean cargo policies have never gone beyond covering in due course of transit. Any interruption in transit causes a break in the insurance.

Q. But the word "transit" is not used as a matter of common practice in those policies, is it?

A. Yes, it is used. The present warehouse-to-warehouse clause speaks of transit, which means that the goods are covered when in due course of transit from warehouse to warehouse. That is general, that is not specific.

Q. You say it is now used, is that a rather recent development?

A. I mean it is used in the warehouse-to-warehouse clause, which was adopted by the Institute. I can check that date. It goes back about fifteen or twenty years. I am not sure. I would have to refresh my memory on that.

Q. So that it is only in the warehouse-to-warehouse clause where the phrase "in transit" appears, is that correct—you don't recall without looking at some document, is that correct, Mr. Inselman?

(Deposition of George Inselman.)

A. Yes, that is true. I might put it this way; it does not appear except in the warehouse-to-warehouse [9] clause. I am looking at the policy merely to check what I think is the situation. That is the situation.

Q. When you say that is the situation, I am not sure that the record is clear.

A. You are asking whether the clause appeared in the policy, and I said in the warehouse-to-warehouse clause.

Q. And only there?

A. I might qualify that again by saying this, that ocean-carrying contracts are not wholly standard; companies are free to write their own form, and when I speak I am merely speaking of the policies I am dealing with and policies I have been dealing with, which are more or less generally alike; but you may find here and there they differ in form; whether the Atlantic Mutual or some other company have the word some other place, I don't know.

Q. Now, Mr. Inselman, have you in your preparation for the testimony that Mr. Charles is asking you to give here, undertaken any research as to the origin of the word or phrase "in transit"?

A. No, I can't say that I have, except that in dealing in claims matters as I have, it was always recognized more or less that ocean cargo policies only cover goods in due course of transit.

Q. In your experience that you mentioned, you also [10] said that you had had claims experience with hull insurance.

A. That is right.

(Deposition of George Inselman.)

Q. Do you recall ever hearing the phrase "in transit" or the word "transit" as descriptive of the vessel's voyage or progress at the time of reporting some casualty or loss that may have occurred?

A. No.

Q. Have you ever heard the expression that a vessel was transiting or was in transit through the Panama Canal, for example?

A. No.

Q. You have not, I assume, from what you said, Mr. Inselman, made any investigation or carried on any research as to the popular or dictionary meaning of the word "transit"?

A. I can't say that I have. When I speak of transit I speak of it in relation to our business, as we have considered it through the years in its practical application.

Q. As I understand it, however, the word "transit" or the phrase "in transit" as you have applied it to your business in your experience occurs as an actually used phrase in the policies only in the warehouse-to-warehouse clause?

A. In the ocean cargo policies, that is right. [11]

Q. In the warehouse-to-warehouse clause?

A. That is right.

Q. Now, Mr. Inselman, have you made any investigation or are you familiar with the statute that is involved in this litigation, which is the so-called amendment of Section 5-g of the Reconstruction Finance Corporation Act?

A. I have examined it.

(Deposition of George Inselman.)

Q. And you have more or less read the statute, is that right? A. That is right.

Q. At what time and on what occasion did you first read the statute?

A. Well, about a year and a half ago or thereabouts when I first undertook the settling of losses under the Act.

Q. And by whom were you employed at that time?

A. I was appointed by the President of the War Damage Corporation.

Q. Was that a sort of post of honor, you might say, a job that was thrown on you as a good citizen and taxpayer, or was it an official paying job by the War Damage?

A. It was analagous to a dollar-a-year job. There was no compensation as far as I was concerned.

Q. For what period of time did you have that position? [12]

A. About a year and a half, it could be a little longer, but I doubt it.

Q. But you had your private employment at the same time? A. Oh, yes.

Q. And in the course of your work upon that so-called dollar-a-year assignment, did you have any occasion to apply the phrase "in transit" to any of the claims or problems that you were considering for the War Damage Corporation?

A. Well, as I analyzed it in the light of my experience in marine insurance matters, I con-

(Deposition of George Inselman.)

strued that term as appearing in the Act as applying to property in the nature of goods or things that were capable of being carried.

Q. Well, now, Mr. Inselman, I don't know whether I made my question clear, but what I want to get at is, was that merely your assumption without the need for any actual application or test by you of the correctness of your assumption?

A. Well, I may say that I read the legislative history attached to the adoption of the Act, and while I am not a qualified expert in that connection and hesitate to talk about it, I did read it, and that assisted me in arriving at that point of view which I did arrive at. [13]

Q. As far as the point of view that you arrived at, was that in a fair sense a matter of academic construction by you, since, if it is a fact, you had had no occasion to consider it as an actual problem in an individual claim or case that was presented?

A. Yes, I did. I had occasion to consider it in connection with a case. I would have to check back the records; a fishing vessel was lost here off the Coast.

Q. When was that vessel lost, in what period, if you remember?

A. During the war some time, I think in early 1942.

Q. Now, in reading the legislative history as you mentioned, do you recall what passages or documents you actually read on that?

(Deposition of George Inselman.)

A. No; I read that quite some time ago and I am afraid I can't answer that intelligently.

Q. In any of the legislative history that you read do you recall seeing a transcript or report of colloquy on the floor of either the Senate or the House of Representatives where questions were asked whether this proposed amendment that finally became the amendment in the law that we are considering here, would cover the vessels and cargoes subject to the then present and occurring submarine warfare on the Atlantic Coast? [14]

A. As I recall it, the legislation, at least one phase of the instigation of it, I think arose, when a Senator or some Representative from Hawaii raised the point that Hawaii was not being on a parity with United States citizens in connection with property in transit in the United States which might suffer loss by enemy action; and I also gathered, as I read, that the purpose of the Act was to apply primarily to distress situations, legislation of an emergency nature.

Q. Well, Mr. Inselman, according to your interpretation the word "property" in the Act would under no circumstances include a merchant vessel, that is, the hull of a merchant vessel, is that correct?

A. I don't think it was contemplated.

Q. In reading any of this legislative history that you have mentioned, did you read merely the committee reports or did you also read the discussions on the floor of the House of Representatives?

(Deposition of George Inselman.)

A. I think I read some of the discussions on the floor, too, as I recall it.

Q. But you have no recollection of any colloquy there that the proposed amendment would cover vessels and cargoes?

A. No. Pardon me, vessels and cargoes you say?

Q. That is right.

A. No, I can't say that I do specifically. When you speak of colloquy just what do you have in mind, what phraseology?

Q. Well, perhaps I can make it a little clearer; that there was a debate on the floor of the House of Representatives and on the floor of the Senate, in which debate some Senators, for example, would ask questions and they would receive answers from other proponents or other Senators on the floor, and I am merely mentioning that generally as a colloquy between men on the floor of the Houses of Congress, which is reported in the Congressional Record.

A. A general discussion revolving around the loss of property by enemy action.

Q. Mr. Inselman, if one were to mention to you—a person inexperienced as myself perhaps—that a vessel was in transit between Honolulu and San Francisco, there would not be any question in your mind as to what the vessel was engaged in at the time, from the standpoint of property?

A. I understand, the word “transit” is quite clear, but when you use that language, when the vessel was on a voyage between Honolulu and San

(Deposition of George Inselman.)

Francisco, the word "transit" is never used in connection with passage, not to my knowledge. [16]

Q. Is the word "voyage" ever used in connection with cargo; in other words, would you say the cargo was on voyage from Honolulu to San Francisco?

A. Yes, we use the word "voyage" in connection with cargoes, and the policies, as I said before, speak of "transit" as well.

Q. You used the word "voyage" in connection with cargo? A. Yes.

Q. You speak of cargo being on a voyage?

A. It is used, I mean as it is there, a colloquial term in the business. We speak of a cargo being on voyage, too.

Q. Is that a common expression, that cargo is on a voyage, or is that in a sense a barbarism, you might say?

A. The term is not used in connection with cargo as much as it is used in connection with hulls. We speak of cargo in transit, but you could say a cargo as being transported on a voyage from New York to Spain or something like that.

Q. In the same fashion, is it not true, Mr. Inselman, in popular speech, that you can refer to a vessel being in transit between two ports?

A. No, I would not say so. [17]

Q. But you have no doubt as to what was intended by the speaker, you would know what the speaker intended to mean, namely, that the vessel was on a voyage from San Francisco to Honolulu, you would know that the speaker meant the vessel was in transit?

(Deposition of George Inselman.)

A. It might arouse my curiosity, I might wonder whether the vessel possibly might be carried, if it happened to be a small ship. You speak of a tug being in transit between Ohio and South America, but you certainly would not consider that tug being under her own power.

Q. If that were a tug, as miscellaneous property carried on a ship?

A. If you sent a tug on a voyage then I consider that tug as being on a voyage here between two points.

Q. Now there is, as I think you will agree, some equipment on a vessel that at least with some frequency is owned by others, such as radio equipment that is merely rented on a certain fee basis to the owner or operator of the vessel; you are familiar with that general situation, are you?

A. Oh, yes.

Q. Would you say that the property constituting such property owned by other persons could fairly be said to be in transit from Honolulu, for example, to San Francisco, [18] when the vessel is on a voyage from Honolulu to San Francisco?

A. I consider that to be property in transit, except when we speak of property in transit we speak of something which begins at one point and is carried to another point and discharged. When we use the term "transit," I should say that property would be in transit as well, except I would call it property being carried on the vessel rather than in transit.

(Deposition of George Inselman.)

Q. Now, in your inland marine experience you have had occasion, I assume, to insure property carried solely by land in railroad or truck?

A. That is right.

Q. And may I ask you then whether you would ever insure the vehicle under inland marine policies?

A. We have insured trucks and also tractors under inland marine policies.

Q. Are those all on a time basis, a contract basis?

A. Yearly basis, annual basis.

Q. So that there is no occasion in those policies to make any reference to the points between which the trucks may travel?

A. Unless it is confined within certain areas or over the lines of the Southern Pacific or over the lines of the [19] New York Central, or whatever the case might be.

Q. Incidentally, are you a Latin student at all, Mr. Inselman?

A. No.

Q. Have you ever been?

A. I play around with it once in a while.

Q. You haven't any idea then what the Latin origin of the word "transit" is?

A. I did know it. I saw that not so long ago. No, I don't remember that.

Q. You may remember the very difficult and irregular verb "ire" meaning to go, and the word "trans" in Latin, across or through; do you remember that?

A. I don't recall that.

(Deposition of George Inselman.)

Q. This document that you referred to, which I assume was for refreshing your recollection early in your direct examination by Mr. Charles, does not contain the word or phrase "in transit," is that correct? A. Yes.

Q. You mean that is correct, it does not?

A. Yes, that is correct. I would just like to read this again before I answer that. There is nothing in this form here, this is not the complete form; it is just the basic underlying form.

(Deposition closed.) [20]

M. M. PEASE,

being duly sworn, testified as follows;

Direct Examination

By Mr. Charles:

Q. What is your full name?

A. M. M. Pease.

Q. How long have you been in the marine business? A. Thirty years.

Q. Are you familiar with the customs and usage and terminology in that business? A. Yes.

Q. Let me ask you whether in your experience in the insurance business ships are referred to as property. A. No, they are not.

Q. May I ask you whether ships on a voyage are spoken of as in transit?

A. I have never heard that term—ships in transit did you say?

Q. Yes.

(Deposition of M. M. Pease.)

A. No, they are spoken of as on voyage rather than transit.

Q. In connection with what kind of property are the words "in transit" used?

A. As cargo, goods in transit. Anything that a ship carries in the nature of goods will be considered as being [21] in transit.

Mr. Henry: Mr. Charles, may it be understood that the same objections apply to each one of these witnesses, no proper foundation laid?

Mr. Charles: That is right.

Cross-Examination

By Mr. Henry:

Q. Mr. Pease, are you familiar with Section 5-g of the War R.F.C. Act as amended by Congress of the United States in March 1942?

A. You are referring to what?

Q. The so-called War Damage Corporation Act.

A. To a degree. Do you mean the statute?

Q. Yes, the statute itself.

A. Well, to a degree.

Q. Have you read it?

A. No, I have never studied it or read any of the articles.

Q. You haven't read the actual text of the Act, but with reference to general discussion rather than the complete Act; have you read any of the legislative history concerning the adoption of the Act, the actual text of the legislative history?

A. I presume so, but only as it has been quoted in [22] the pres, not beyond that.

(Deposition of M. M. Pease.)

Q. So it would be just mere accident, you might say, that you might have seen it?

A. That is right.

Q. Now, you mentioned that in marine insurance parlance vessels are never referred to as property, is that correct?

A. That is right.

Q. However, I don't assume you would dispute the fact that they are property?

A. They are property, yes, in the sense of that word or analogy.

Q. And in the sense that they are physical property that can be seen and touched, et cetera, isn't that right?

A. Well, possibly that is true, but not in the parlance of the business.

Q. Now, I assume, then, that you are not familiar with the fact that the War Damage Corporation Statute, Section 5-g of the Reconstruction Finance Corporation Act as amended in March of 1942, when being discussed on the floor of the Houses of Congress of the United States was considered at least by some of the legislators as including vessels as well as cargoes?

Mr. Charles: I object to the question on the [23] ground that it states what I believe not to be the fact.

A. No, I was not familiar with that.

Q. And also, Mr. Pease, have you ever in your experience in connection with shipping and marine insurance seen or heard a reference to a vessel in transit or transiting any particular area of her voyage or parts of the world?

(Deposition of M. M. Pease.)

A. If I understand you correctly, I have never heard it spoken of as being in transit between two points.

Q. You never heard the expression that a vessel—and I am speaking of a moderately large cargo vessel, let us say—was in transit through the Panama Canal?

A. No; I have heard it spoken of as being on a voyage, or generally speaking you think of it going through, rather than using the word “transit,” which is seldom used, if ever.

Q. You have, then, heard it on occasion?

A. I can't recall ever having heard it.

Q. There would be doubt in your mind, though, as to what the speaker that used the phrase or the sentence, let us say, “the vessel Lahaina was in transit between Honolulu and San Francisco” intended to convey; what would your understanding be of the speaker's intention? [24]

A. I could not very well speak for the proposer, the speaker's intention; I would not know what he meant.

Q. What would you understand such a quoted sentence to mean, Mr. Pease?

A. Well, it is a most unusual application of the word “transit,” but he must have meant voyage, I would say.

Q. Do you ever speak of cargo as being on a voyage, or is cargo always in transit?

(Deposition of M. M. Pease.)

A. You seldom speak or use the word either way. It is more in the nature of a shipment by a vessel between two points; that is all; you don't speak of it as a cargo in transit; you speak of it as cargo on a ship, on a voyage.

Q. Then even with respect to cargo the phrase "in transit" is seldom used, is that correct?

A. It is not generally employed. It is employed more in connection with shore risk property, than voyage risk.

Q. And by shore risk you mean cargo carried by truck or rail? A. That is right.

Q. So far as the general and common use in the sense of frequency of use of the phrase "in transit" with respect to marine insurance, that is rare? [25]

A. I would say it was rare, yes.

(Deposition closed.) [26]

HOWARD W. CANN,

being duly sworn, testified as follows;

Direct Examination

By Mr. Charles:

Q. What is your address?

A. 363 Parker Street, Newark, New Jersey.

Q. What is your present position?

A. Manager of the Railroad Insurance Association.

Q. May I ask what that association is, what type of business it is?

(Deposition Howard W. Cann.)

A. It is a combination of fourteen insurance companies insuring properties and liabilities of railroads for various perils, explosion, fire, et cetera.

Q. How long have you been in the insurance business, Mr. Cann, approximately?

A. Five years with the Ocean Accident Guarantee Corporation; twelve years as Insurance Manager for the National Dairy Products Corporation; two years with the American Mutual; five and a half years as Assistant Manager and Manager of the Railroad Insurance Association.

Q. And through that experience have you become familiar with the customs and usages in the insurance business?

A. Quite completely, yes.

Mr. Henry: May the same objection run to all of this witness's testimony in this line of interrogation without repeating it here?

Mr. Charles: That is right.

Q. Are you familiar with the terminology that is used in the insurance business?

A. Yes.

Q. Have you ever heard the terms "in transit" used in connection with insurance, Mr. Cann?

A. Very frequently.

Q. I wonder if you could tell us in what connection the terms "in transit" are used and in what connection they are not used?

A. They are used primarily with the movement of merchandise, whether on land or on sea, and not used in connection with fixed properties.

Q. Can you tell us whether those terms are used in connection with the insurance of rolling stock?

(Deposition Howard W. Cann.)

A. Not generally; only in one specific case that I can think of.

Q. What is that case?

A. At the present time practically all railroads of the country are changing from steam power to Diesel power. When a Diesel locomotive is purchased and delivered to the [28] purchasing railroad that locomotive may travel on its own wheels over tracks, but not under its own power, being drawn in a train with other cars and under a bill of lading just the same as any other merchandise in transit. That is all I can think of.

Q. That is the only time, when a locomotive would be regarded as property in transit, when it is not under its own power, but when it is being conveyed, is that right? A. That is correct.

Q. Are trains in operation insured as property in transit? A. No.

Q. Do you know of any other conveyances that are insured as in transit? A. No.

Q. The words "in transit" when used with reference to the insurance of merchandise, can you tell us whether those words have been used for a long time or whether the terms have only been employed recently?

A. To the best of my knowledge they have been used for many, many years.

Cross-Examination

By Mr. Henry:

Q. Mr. Cann, have you ever been employed by a marine [29] insurance company? A. No.

(Deposition Howard W. Cann.)

Q. In connection with your present employment with the Railroad Insurance Association, do you place any marine insurance?

A. Inland Marine.

Q. Inland marine, so that the record may be clear on the matter, Mr. Cann, does not have any connection with water-borne commerce, is that correct?

A. That is not correct; inland marine insurance can apply to certain harbors and rivers.

Q. I should say ocean-borne commerce.

A. No, it does not include ocean-borne commerce.

Q. In any of your experience during your entire career have you placed or handled ocean marine insurance? A. No.

Q. Are you familiar at all with the so-called March, 1942 amendment to the Reconstruction Finance Corporation Act, which is, incidentally, Mr. Cann, the statute involved in this litigation, known as 5-g.

A. I am thoroughly familiar with the rules and regulations and provisions of the War Damage Corporation, but I am not familiar with the Act. I am familiar with the War Damage Corporation rules and regulations growing out of that Act. [30]

Q. Did you have anything to do with those regulations in connection with ocean marine coverage?

A. Not with ocean marine.

Q. Let us assume, Mr. Cann, that someone in describing the whereabouts or journey of a train said

(Deposition Howard W. Cann.)

that the train was in transit from New York to San Francisco; would you have any doubt in your own mind as to what was intended by the speaker to describe the activity of that train?

A. I would say that the train was en route, it was not in transit.

Q. But if a person in the course of some statement to you used the phrase "in transit" to describe the trip from San Francisco to New York or New York to San Francisco, you would know what he meant, wouldn't you?

A. I might know what he meant, but I would think that the term was misapplied.

Q. Have you made any investigation or study in connection with preparing for this deposition, as to the origin and meaning of the phrase or term "in transit"?

A. No, no preparation of any kind.

Mr. Henry: That is all.

Redirect Examination

By Mr. Charles:

Q. In connection with Mr. Henry's prior question, if [31] instead of speaking of a train in transit from San Francisco to New York, someone spoke to you of a locomotive in transit, what would you take that to mean, assuming he was an insurance man?

A. To me it could mean only one thing, and that was that the locomotive was not traveling under its

own power but was being drawn by other means of power, and then only on a bill of lading given by the carrying road.

(Deposition closed.) [32]

HAROLD L. WAYNE,

being duly sworn, testified as follows;

Direct Examination

By Mr. Charles:

Q. Mr. Wayne, what is your present position?

A. I am the Manager of the Inland Marine Underwriters Association and of the Inland Marine Insurance Bureau.

Q. Would you tell us what that association and bureau are?

A. The association is a voluntary organization of companies which prescribes advisory forms and rates with respect to its members on various classifications of inland marine insurance; and the bureau is a statutory licensed rate organization which performs the same function in states in which it is licensed to act.

Q. How many years have you been connected with the insurance business?

A. Twenty-five.

Q. Could you tell us in what other positions you have served prior to your present one?

A. Prior to my present position I was Executive Head of Albert Wilcox Co. Inc., which was an organization performing some of the functions now

(Deposition of Harold L. Wayne.)

performed by our present organization and in addition to that operated a number of ocean marine so-called syndicates and pools and performed [33] other service for insurance companies, and during the war for the Government.

Q. When you speak of for the Government among the services performed was service for the War Damage Corporation, is that correct?

A. That is correct. That was a personal service which I performed as a representative of the marine interests on the War Damage Corporation Committee.

Q. And by marine interests you mean the marine insurance companies?

A. The marine insurance companies.

Q. And you know then, that insurance companies did confer with the Government Officials in connection with the War Damage Corporation Program?

Mr. Henry: I will object to the question as leading, and that it is indefinite and vague and not confined to time or place.

Mr. Charles: I will withdraw the question.

Q. Did you yourself give any advice or assistance to the insurance program of the War Damage Corporation?

Mr. Henry: I object to the question as being indefinite and not defining the time and place and occasion for any such advice.

Q. To get back, Mr. Wayne, to your experience, did [34] you occupy any other positions in the in-

(Deposition of Harold L. Wayne.)

insurance field prior to your association with Albert Wilcox & Co.?

A. Well, my position with Albert Wilcox & Co. grew out of my first connection with the insurance business, which was with Wilcox, Peck & Hughes in 1921. When I joined that organization Albert Wilcox & Co. was then a part of Wilcox, Peck & Hughes, and became a separate organization after the merger of Wilcox, Peck & Hughes with Johnson & Higgins in 1924.

Q. Have you become generally familiar with insurance usages and customs in the marine business?

A. Yes, sir.

Q. And are you generally familiar with insurance terminology? A. Yes.

Mr. Henry: Just as a matter of caution, Mr. Charles, it is understood that the same objection that I raised on the first deposition will continue to this entire line.

Mr. Charles: That is correct.

Q. Mr. Wayne, I wonder if you can tell us whether you have heard the words "in transit" used in connection with insurance?

A. For all the years I have been in business, yes. [35]

Q. Can you tell us in what connection the words "in transit" are employed?

A. They are employed to describe peril assumed by underwriters on goods while such goods and

(Deposition of Harold L. Wayne.)

merchandise of whatever description are being transported from place to place by the particular mode of transportation which may be set forth in the policy or which may prevail between the two places.

Q. Can you tell us whether the terms "in transit" are used in connection with insurance of a vehicle or of a ship?

A. Never unless the vehicle or the ship itself is to be transported on another vehicle from one place to another place, such for example as the transportation of a yacht or motor vehicle from its place of manufacture to its seaport or place of sale.

Q. Do you know anything about airplanes, whether airplanes are ever insured as merchandise in transit?

A. I think the same reply would hold true there, that if an airplane were to be insured as property in transit it would be insured while it was being transported either by land or sea or air from one place to another, only not under its own power.

Q. Have you ever seen a policy where the words "in [36] transit" were used in connection with insurance of a carrier or the conveyance itself when operating under its own power or motion?

A. Never.

Q. Mr. Wayne, how much of the inland marine insurance that is written in the United States has some relation to your organization?

(Deposition of Harold L. Wayne.)

Mr. Henry: I object to the question as vague and indefinite.

Mr. Charles: I will admit it is vague.

Q. What I am asking you——

A. I don't know the answer.

Q. ——could you give us any idea as to the extent of the inland insurance underwriting of the companies which your association represents?

A. Well, it represents to one extent all of the inland underwriting of the companies, inasmuch as the association concerns itself with inland marine activities as a whole in so far as the prescribing of forms, rates and rules is concerned, but in that field represents approximately fifty or sixty per cent of the total writings of the companies; but in premium volume from seventy million dollars to ninety million dollars a year in premiums. [37]

Q. Do these companies insure ships, do you know?

A. The very great majority of the companies do insure ships.

Q. Can you tell us to what extent inland marine concerns itself with the insurance of property that is transported over water?

A. To the extent that such property is transported over the inland waterways of the United States, and with some companies over the coastal waterways, excluding intercoastal shipments, which are always classed ocean rates.

Q. Mr. Wayne, do you have any relationship to the War Risk Reinsurance Exchange?

(Deposition of Harold L. Wayne.)

A. Yes, I set up the operations of the clearing organization for the War Shipping Administration during the war, handling all of the cargo, and even of the War Shipping Administration; in other words, it was all cleared through my organization.

Q. Are you familiar with the private field of war risk insurance as it existed during the war?

A. Yes, sir.

Q. Can you tell us whether during the year 1941 war risk insurance on hulls was available in the commercial market? [38]

A. It was available.

Q. And do you know whether that was true all of 1941? A. That was true all during 1941.

Q. I wonder if you could tell us briefly, Mr. Wayne, what, if any, association you have had with the War Damage Corporation?

A. I was from the very earliest days Marine Representative, serving as the companies' committee for the War Damage Corporation.

Q. What was that companies' committee?

A. That was a committee that was organized to set up the operations of the War Damage Corporation and to devise the forms which were to be issued and the rates which were to be charged. My concern was with the transportation end of that field.

Q. When you speak of companies, are you referring to private companies or a company of the R.F.C.

A. Companies that acted as fiduciaries, yes, sir, and also to the R.F.C.

(Deposition of Harold L. Wayne.)

Q. And those companies which acted as fiduciary, what kind of companies were those?

A. Those were the same companies which were members of our organization, the Fire and Marine companies of the country. [39]

Q. Have you any approximate idea as to about how soon after the outbreak of war on December 7, 1941 you became interested in the War Damage Corporation?

A. I have a very distinct recollection of participating in meetings in both New York and Washington, the early days of 1942—during the month of January, for that matter.

Q. You mean 1942?

A. 1942. I believe that the first discussion in which I participated took place either the latter part of December, 1941 or the very early part of January, 1942.

Q. Were any of these conferences with Government Officials or employees of the Government, or were they all with other insurance men?

A. No, there were many of them with representatives of the Government, and others with company men.

Q. You mentioned when you were President of Albert Wilcox & Co. A. Yes.

Q. When you were handling the affairs of Albert Wilcox & Co. you acted for the War Damage Corporation; can you tell us briefly in what capacity?

(Deposition of Harold L. Wayne.)

A. Perhaps the best description would be as the Inland Marine Expert of the War Damage Corporation. [40]

Q. And did that organization have anything to do with handling of claims against the War Damage Corporation?

A. Yes, we subsequently handled a number of marine claims for the War Damage Corporation; as a matter of fact we were the clearing organization for those claims.

Mr. Henry: Were those marine?

The Witness: Yes, primarily marine, more marine than inland.

Q. Did you have anything to do with the preparation of the insurance policy forms that were issued by the War Damage Corporation?

A. Yes, with the preparation of the riders or forms which were used in connection with transport insurance to be furnished by the War Damage Corporation.

Q. Can you tell us whether there was any in transit form of insurance that was issued by the War Damage Corporation?

A. Yes, there was a form issued by the War Damage Corporation which covered property in transit.

Q. Can you tell us what type of property was covered by that?

Mr. Henry: I object to the question on the ground that it does not identify the time that these

(Deposition of Harold L. Wayne.)

forms [41] were issued or whether it has any bearing upon the period involved in this dispute.

A. The War Damage Corporation transport policies covered any and all kinds of property of the assured which was transported or to be transported from place to place within the territory covered by the War Damage Corporation, either in the United States or in the Territory of Hawaii or in Alaska. There were two forms, one covered specific transit risks, or what was termed trip transit risks in business; the other was an open form which covered any shipments the assured might make during the currency of the policy, and subject to reports of the values of those shipments.

Q. Did those policies cover the hulls of ships?

A. Never

Q. Or any vehicles? A. Never.

Cross-Examination

By Mr. Henry:

Q. Mr. Wayne, these forms that you say that you prepared, and the riders, et cetera, none of those were for the period from December 7, 1941 to July 1, 1942, were they?

A. To the best of my recollection, no.

Q. Isn't it a fact, to refresh your recollection, that all of your work in connection with the preparation of [42] these forms related to the period subsequent to July 1, 1942 and was during the period from July 1, 1942 onwards, when regular in-

(Deposition of Harold L. Wayne.)

insurance policies were issued and premiums paid?

A. That is the best of my recollection.

Q. So that you had nothing to do with the determination of forms or conditions of policies in connection with the War Damage Corporation for the period prior to the actual issuance of policies that were of such a nature that premiums were required?

A. My recollection is that there were no policies issued during that period.

Q. And it is your understanding that such coverage as was given was by virtue of the statute and the announcement of the Government, and no premiums were charged?

A. Given, as we directed it at the time, under the free fund issued by the Congress for the payment of certain types of losses.

Q. So that your work with the War Damage Corporation did not relate to the free fund period?

A. Except that we were later called upon for our services in connection with the claims which were filed with the War Damage Corporation during that free period.

Q. But as far as the making of the policies for that free period, et cetera, you had nothing to do with that? [43]

A. That is right.

Q. You said in reply to one of Mr. Charles' questions that there was marine war risk insurance available for vessels, available to owners of vessels, during this entire year 1941, is that correct?

A. Yes, sir.

(Deposition of Harold L. Wayne.)

Q. There was also like insurance available, was there not, for the cargoes on such vessels in the year 1941? A. Yes, sir.

Q. Isn't it your understanding, Mr. Wayne, that cargoes, at least from your testimony, were covered by this free fund if they were in transit between ports of the United States and possessions of the United States without payment of premium for the period covered by December 7, 1941 to July 1, 1942?

A. I don't think so, because I don't recall what the provisions of the statute were with respect to the free insurance. I do recall definitely that there was a fund, I believe it was one hundred million dollars, appropriated by Congress to pay certain types of losses in the interim between Pearl Harbor and the time that the War Damage Corporation began to issue policies. I think that was July 1, 1942, I am not sure of the dates. [44]

Q. Just attempting to refresh your recollection here, isn't it a fact, Mr. Wayne, that the fund started out as a one hundred million dollar fund under executive announcement, and then by virtue of the so-called War Damage Corporation Statute, which was adopted in March of 1942, that fund was increased to one billion dollars?

A. I have no clear recollection of that. I do know that the one hundred million dollar fund became a billion dollar fund, but whether the billion dollars was appropriated to cover as free insurance I have no recollection at all.

(Deposition of Harold L. Wayne.)

Q. But again you had nothing to do with the free insurance program?

A. Not at the time; I did later on.

Q. But you also had nothing to do with the legislation finally adopted by Congress and which is the subject of this litigation we are now taking testimony on; you had nothing to do with that?

A. Nothing at all.

Q. Did you ever review any of the legislative history or proceedings leading up to the legislation?

A. Several years ago in connection with the work we were performing for the War Damage Corporation in the handling of claims which had been filed covering losses occurring [45] during what you have termed the free period.

Q. Did any of your review bring to your attention the fact that on the floor of Congress, that is, on the floor of the Senate or the House, there was discussion between the legislators there that the insurance that would be provided during this free period at least, would cover both vessels and cargoes?

Mr. Charles: I object to that question on the ground that the reference to legislative history had reference to the Merchant Marine Act of 1936 as amended, and not to the War Damage Corporation, known as Section 5-g, and therefore the question is misleading.

Mr. Henry: If I may have the question re-

(Deposition of Harold L. Wayne.)

peated, and if you will instruct the witness to answer it.

Mr. Charles: Yes, you may answer it.

(Question read as above recorded.)

A. I have no recollection of it.

Q. Did you have anything to do, Mr. Wayne, in any of your later work for the War Damage Corporation, in attempting to correlate the insurance that was to be provided by the War Shipping Administration with the insurance that was to be provided by the War Damage Corporation?

A. Only indirectly, through my activities on the committee. [46]

Q. And that again related to the period after July 1, 1942, is that correct?

A. To the best of my recollection, yes.

Q. At any rate, it was after the free period?

A. It was in connection with the business which was to be insured under specific policies.

Q. And those policies were all policy forms after the free period, isn't that right?

A. Yes. However, I think the record ought to be clear on that. That is my best recollection.

Q. You didn't issue any policies or have anything to do with issuing any policies other than those for which a premium was to be charged?

A. Yes.

Q. So that it was not free insurance?

A. It was not, sir.

(Deposition of Harold L. Wayne.)

Q. And that insurance, incidentally, that was not the so-called free insurance, but was placed entirely on the voluntary request of the property owner, is that right? A. Yes, sir.

Q. In connection with the phrase "in transit," will you assume that the ship owner stated to you that "My vessel being a cargo vessel of between seven thousand and [47] eight thousand deadweight tons is now in transit between Honolulu, Hawaiian Islands and San Francisco, California." What would you understand the vessel owner to mean?

A. That the ship was en route between the two ports.

Q. In other words, that she was on a voyage from Honolulu to San Francisco.

A. From Honolulu to San Francisco.

Q. In connection with your marine insurance experience, have you had occasion, or did you have occasion to process claims of a purely ocean marine character? A. Yes, sir.

Q. Would that be in connection with hull insurance as well as cargo insurance?

A. Yes, both hull and cargo insurance, P. and I., as well.

Q. P. and I.?

A. Very little P. and I.; the same for foreign countries.

Q. Do you recall any Master's report or casualty report in which the narration regarding the circumstances and general conditions of such a casualty

(Deposition of Harold L. Wayne.)

might have contained a statement to the effect that the vessel was at the time of the casualty in transit in certain waters?

A. No, and it would have made absolutely no impression [48] on me had I read of such a statement in the Master's report.

Q. In other words, there may have been such a statement but you have no recollection on your part?

A. A master may have used the words "in transit" in referring to his voyage, but the words would have created no particular impression, any more so than the usage of words by anyone else would have.

Q. But again you would understand, if such a reference had been made, that the vessel was in transit, that she was enroute from certain points to other points, is that correct? A. Yes, sir.

Q. Now, all these so-called in transit policies or forms that you were instrumental in devising or assisting in making up for the War Damage Corporation related to inland marine and cargo insurance, is that right? A. Yes, sir.

Q. And they were all subsequent to the free period? A. That is right.

Q. And by free period we are referring to the general coverage that was granted without policy application and without policy form?

A. Yes, sir.

Q. Do you know anything about the availability of [49] ocean marine insurance in the period from

(Deposition of Harold L. Wayne.)

December 7, 1941 to let us say December 20, 1941 for vessels at sea between Honolulu and San Francisco?

A. To the very best of my recollection such insurance was available at all times, including the period between December 7th and December 20th.

Q. On her voyage and in transit, if I can use the term, Mr. Wayne, at the time of Pearl Harbor, that is after December 7, 1941?

A. Yes, it was not at all unusual for the marine market at any time, and including that period, to cover a risk while it was actually en route, whether that would be the vessel itself or the cargo in such vessel.

Q. And would that be true if the whereabouts, or the virtual existence of the vessel was unknown at the time? A. Yes, sir.

Q. That was also true, wasn't it, Mr. Wayne, of cargo? A. That was also true of cargo.

Q. There was no distinction in that regard between hull and cargo?

A. No, the insurance as a matter of fact would be written warranted no known or reported loss, and in some cases with the time of the attachment of the policy very [50] clearly indicated so that a loss occurring prior to the attachment hour or minute would be excluded.

Q. Isn't it a fact that during that very grave emergency period for the few weeks following December 7, 1941, that the insurance market and the

(Deposition of Harold L. Wayne.)

general transmission of information was in a very difficult and uncertain condition?

A. That is true.

Q. So that while insurance could in a general sense be considered available, it was still subject to grave conditions, from the timing standpoint and the premium standpoint of obtaining back coverage?

A. Well, from the time or premium standpoint, of course insurance would be placed either in this market or the London market, which was also available, and the premium would be based upon that rate which the underwriter felt was proper for the risk, considering all of the circumstances.

Q. And one of the circumstances was the general uncertainty that existed at the time, is that correct?

A. Yes, and the disposition of the vessel, if cargo was insured, its location.

Q. Do you know whether the United States Maritime Commission was at that time issuing policies of ocean [51] marine insurance—war risk I am speaking of now—in the period from December 7th to December 20, 1941?

A. Yes, the War Shipping Administration Maritime Commission was issuing war risk policies I believe, during that period.

Q. You have no direct knowledge?

A. I have no distinct knowledge. However, that is a matter which could be determined from the records in very quick order.

(Deposition of Harold L. Wayne.)

Q. Do you know what fund, if any, the Maritime Commission had available for such purpose?

A. No, I have no recollection of that.

Q. And you have no knowledge therefore, as a private underwriter, whether you would consider that the insurance that might be obtained, if it were obtainable from the Maritime Commission in that period, was adequately covered by a sufficient fund?

A. No.

Redirect Examination

By Mr. Charles:

Q. Were there any difficulties, Mr. Wayne, in connection with some of the war risk insurance on hulls in November of 1941?

A. In November of 1941, that is prior to Pearl Harbor; none whatever. [52]

Recross-Examination

By Mr. Henry:

Q. Did you have anything to do with the placing of hull insurance in the period of November, 1941?

A. Nothing to do with the placing. As I said at the outset, I was engaged in the marine insurance business, and part of my job was to know what was going on in the marine insurance market.

Q. And at that time you were only interested in inland marine mainly?

A. No, at that time my primary interest was ocean marine, including the operation of the American Cargo War Risk Insurance Exchange, which was the companies' war risk organization.

(Deposition of Harold L. Wayne.)

Q. And at that time in November of 1941 and prior to Pearl Harbor, your work was mainly on cargo war risk insurance, is that right?

A. That is absolutely true.

Q. And you had nothing directly to do with hull war risk insurance? A. That is right.

Q. And at that time cargo war risk insurance was obtainable? A. Yes, sir.

Q. And it is your understanding from your general [53] information that hull war risk insurance was also obtainable? A. Yes.

Q. Although with respect to the latter you had nothing directly to do?

A. Nothing directly to do.

(Deposition closed.) [54]

I, Arthur C. Smith, a Notary Public in and for the County and State of New York, do hereby certify that on the 14th day of March, 1947, I took the foregoing depositions of George Inselman, M. M. Pease, Howard W. Cann and Harold L. Wayne, in shorthand, and thereafter reduced the same to type-writing and that the same is a true and accurate transcript of my shorthand notes, the signing, reading and filing thereof having been waived by counsel for both parties.

[Seal] /s/ ARTHUR C. SMITH,
154 Nassau Street,
New York 7, N. Y.

[Endorsed]: Filed April 8, 1947. [55]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 24575-G

In the Matter of:

MATSON NAVIGATION COMPANY,

a Corporation,

Plaintiff,

vs.

WAR DAMAGE CORPORATION,

a Corporation,

Defendant.

DEPOSITION

Washington, D. C.

Tuesday, March 18, 1947

Depositions of Mr. Matthias W. Knarr and Robert C. Goodale, witnesses of lawful age, taken on behalf of the Defendant in the above-entitled action, wherein Matson Navigation Company, a corporation, is the Plaintiff, and War Damage Corporation, a corporation, is the Defendant, pending in the Southern Division of the United States District Court for the Northern District of California, pursuant to stipulation, before Lloyd L. Harkins, a notary public in and for the District of Columbia, at the offices of the Reconstruction Finance Corporation, 811 Vermont Avenue, Northwest, Washington, D. C., at 10 o'clock a.m., Tuesday, March 18, 1947.

(Deposition of Matthias W. Knarr.)

Appearances:

On behalf of the Plaintiff: Lyman Henry.

On behalf of the Defendant: Allan E. Charles.

MATTHIAS W. KNARR

a witness of lawful age, was thereupon duly sworn and, being examined by counsel, testified as follows:

Direct Examination

By Mr. Charles:

Q. Will you state your full name for the record, please? A. Matthias W. Knarr.

Q. What is your position presently with the War Damage Corporation?

A. My present position with the War Damage Corporation is that of Secretary.

Q. Approximately how long have you been Secretary?

A. Since the latter part of September, 1942.

Q. Did you have any position with the War Damage Corporation prior to that time?

A. Yes, sir.

Q. What position was that? [2*]

A. I was Assistant Secretary, from the inception of the corporation, since December 13, 1941.

Q. And, as Secretary of the War Damage Corporation, do you have custody of its records?

A. As Secretary, I have custody of the corporation's records.

*Page numbering appearing at top of page of original Reporter's Transcript.

(Deposition of Matthias W. Knarr.)

Q. Can you tell us, Mr. Knarr, whether any regulations have been passed at any time by the War Damage Corporation?

A. Yes, Regulations A on the general program.

Q. Do you have a copy of those regulations?

A. Yes, I have copies of the regulation here, and two amendments to Regulations A.

Q. The Regulations A that you speak of, and which you have handed to me, state:

“Effective July 1, 1942”;

Is that correct?

A. Yes, sir; that is correct.

Mr. Charles: I would like at this time to offer in evidence Regulations A, the document which has been identified by the Secretary, Mr. Knarr.

Mr. Henry: I am going to register, out of an abundance of caution, the understanding that our objections are reserved until the time of trial. I am going to offer an objection to these so-called Regulations A on the ground that they are incompetent, irrelevant, immaterial, a self- [3] serving declaration, a self-serving document, and by its own terms, as you have stated, is effective July 1, 1942, and hence has no bearing upon the issues of the matter in controversy in this litigation.

(Regulations A was marked as Defendant's Exhibit No. 1 for identification.)

Q. (By Mr. Charles): You state, Mr. Knarr, that the regulations have been amended?

A. They are amended, yes.

(Deposition of Matthias W. Knarr.)

Q. Do you have any copies of the amendment?

A. I have copies of the amendments to the regulations.

Q. Can you tell us of what the first amendment consists? A. The first amendment——

Mr. Henry: I would like to have it understood that my objection, Mr. Charles, runs to this entire line of questioning, and also to the offer of these documents without the necessity of my repeating it.

Mr. Charles: Very well, Mr. Henry.

The Witness: The amendment to Regulations A, effective July 1, 1942, are the amendment of Rule 10.

Q. (By Mr. Charles): With what is that concerned?

A. It states that policies may be issued to mortgagees [4] or other holders of security or financial interests in property eligible for coverage under these regulations. It is quite a long amendment here.

Q. What is the date of that amendment?

A. It is effective July 1, 1942.

Q. Is this document you have handed me, entitled "Amendment to Regulations A" a true copy of the amendment to Rule 10, and to Rule 26.01 and to Rule 26; is that correct?

A. Yes, sir; that is correct.

Mr. Charles: I offer in evidence these amendments to Regulations A, and I will ask that they be marked as Defendant's Exhibit No. 2.

(Deposition of Matthias W. Knarr.)

(Amendment to Regulations A, effective July 1, 1942, was marked Defendant's Exhibit No. 2 for identification.)

Q. (By Mr. Charles): Were there any other amendments to Regulations A?

A. Yes, the amendment effective October 1, 1942.

Q. With what is that second amendment concerned?

A. That adds to Regulations A, Rule 26.02.

Q. With what is that concerned?

A. It relates to registered mail or express coverage for money and securities.

Q. Is this a true copy of that amendment?

A. That is a true copy.

Mr. Charles: I should like to offer in evidence this [5] document which Mr. Knarr has handed to me, entitled Amendment to Regulations A, which adds a new rule, Rule 26.02. I offer this in evidence as Defendant's Exhibit No. 3.

(Amendment to Regulations A effective October 1, 1942, was marked Defendant's Exhibit No. 3, for identification.)

Q. (By Mr. Charles): Other than these amendments, have there been any additional amendments or changes in Regulations A? A. No, sir.

Q. Can you state whether these regulations, as amended by these amendments, all of which have been designated as Defendant's Exhibits 1, 2 and 3, are still in force and effect?

A. They are still in force and effect.

(Deposition of Matthias W. Knarr.)

Q. Can you state, Mr. Knarr, whether or not these regulations A have been approved by the Secretary of Commerce?

A. They have been approved by the Secretary.

Q. Who was the Secretary of Commerce by whom they were approved?

A. Mr. Jesse Jones, who was the Secretary of Commerce then.

Q. And you have his approval in the minutes?

A. Yes.

Q. Do you have a copy of the resolution of October 2, [6] 1944, there? A. Yes, I have one.

Q. Mr. Knarr, can you tell me whether this resolution which you have handed me and stating at the end to have been adopted by the Executive Committee of the War Damage Corporation on October 2, 1944, was, in fact, adopted by the Executive Committee of the War Damage Corporation?

Mr. Henry: Just a moment. I will object to the question on the ground that it calls for a conclusion of the witness, it is leading, and is not the best evidence.

Those objections are made in addition to the running objection to which, I understand, Mr. Charles, you have so kindly stipulated, which go to the entire line of questioning here.

Mr. Charles: I will withdraw my question.

Q. (By Mr. Charles): Mr. Knarr, can you tell me whether any resolution having to do with scope of protection to be extended by the War Damage Corporation was passed by its Executive Committee on or about October 2, 1944? A. It was.

(Deposition of Matthias W. Knarr.)

Q. I will ask you whether this resolution which you handed to me and which bears the date at the end October 2, 1944, is a true copy of the resolution passed by the Executive Committee on that date.

Mr. Henry: The same objection as not being the best evidence.

In my judgment, Mr. Charles, the minutes of the meeting should be produced.

The Witness: It is.

Q. (By Mr. Charles): Mr. Knarr, could you show us the minutes of the meeting of April 2, 1944?

(A document was produced by the witness.)

Q. (By Mr. Charles): You have shown what purports to be a minute book of the War Damage Corporation, and you have shown us what appears to be the minutes of the meeting of the Executive Committee of the War Damage Corporation dated October 2, 1944, beginning at page 242 of this book, and running to page 247.

Mr. Knarr, can you state whether these are the minutes of the Executive Committee of the War Damage Corporation for that meeting?

A. That is a carbon copy. I can get you the original copy, if you wish. This is a working copy for index purposes.

Q. Could you get the original, please?

A. Yes, sir.

(The original of the document above referred to was produced by Mr. Knarr.) [8]

(Deposition of Matthias W. Knarr.)

Q. (By Mr. Charles): These minutes which you have just shown us are of the meeting of the Executive Committee of the War Damage Corporation, pages 242 through 247, inclusive, and are the original minutes of the corporation for the meeting of that date? A. They are.

Q. And this signature at the end is your signature, is it not? A. It is my signature.

Q. And the seal is the seal of the corporation?

A. It is the seal of the corporation.

Mr. Henry: If you have in mind offering those minutes, I will be perfectly willing to stipulate that a photostatic copy of that can be substituted for the originals, subject, of course, to the other objections as to the propriety of the offer.

Mr. Charles: Would you want a photostatic copy rather than a verified copy in this form?

Mr. Henry: That mimeographed document that is attached as an exhibit to your answer is simply the resolution and does not contain the discussions concerning the adoption of the resolution which appears in the minutes.

Mr. Charles: We offer in evidence a photostatic copy of the minutes of the corporation of October 2, 1944, and [9] will ask Mr. Knarr if we may be supplied with a photostatic copy.

The Witness: Yes, sir.

(The photostatic copy of the resolution of October 2, 1944, was marked as Defendant's Exhibit 4, for identification.)

(Deposition of Matthias W. Knarr.)

Mr. Henry: I wonder if you could arrange also to have an extra photostatic copy supplied to the reporter so that I would have one attached to my copy of the deposition.

Mr. Charles: Could we have one for the original and one for Mr. Henry's copy and one for our copy?

The Witness: As many as you like.

Mr. Charles: I think perhaps one extra copy would help, just in case we need it.

Q. (By Mr. Charles): The resolution, a copy of which you handed me, was passed by the Executive Committee as shown in the original minutes of October 2, 1944; is that correct?

A. That is correct.

Q. May I ask you whether the minutes of the Executive Committee just referred to were approved by the Board of Directors of the War Damage Corporation?

A. Yes, sir; they were.

Q. When were they approved?

A. On October 13, 1944.

Q. Can you tell us, Mr. Knarr, whether this resolution [10] of October 2, 1944, is still in full force and effect?

A. It is still in full force and effect.

Q. Was that resolution approved by the Secretary of Commerce?

A. It was approved by the Secretary of Commerce.

(Thereupon there was discussion off the record.)

(Deposition of Matthias W. Knarr.)

Q. (By Mr. Charles): I will show you, Mr. Knarr, a document dated December 30, 1942, carrying the designation RFC-1718, and I will ask you if this document was approved by the War Damage Corporation?

A. Yes, sir; it was approved by the War Damage Corporation on December 22, 1942.

Mr. Charles: I will ask that the document referred to be marked as Defendant's Exhibit 5 for identification.

(The document entitled RFC-1718, was marked as Defendant's Exhibit No. 5 for identification.)

Q. (By Mr. Charles): On what date was this Defendant's Exhibit No. 5 for identification, to which I have just referred, approved?

A. On December 22, 1942.

Q. And that appears in the minutes of the Executive Committee, does it?

A. Yes, of the Executive Committee's meeting on December 22, 1942. [11]

Mr. Henry: Mr. Charles, to save time, and to save you the expense and difficulty of producing the actual minutes of December 22, 1942, reserving all my other objections, if that is agreeable——

Mr. Charles: Yes.

Mr. Henry: ——I would suggest that you may be willing to stipulate that the only reference to this press release is in these minutes, and is a state-

(Deposition of Matthias W. Knarr.)

ment "The Executive Committee approved the following press release by the Secretary of Commerce" and then appears in quotations the minutes of December 22, 1942, the text of the press release as shown in Defendant's Exhibit No. 5, and that is the only discussion or reference to that press release that appears in those minutes.

Mr. Charles: That is correct. We will so stipulate, and we will offer in evidence Exhibit No. 5, which is the press release.

Q. (By Mr. Charles): I want to ask you, Mr. Knarr, whether the minutes of the Executive Committee of December 22, 1942, to which you just referred, were approved by the Board of Directors of the War Damage Corporation and, if so, on what date?

A. They were approved on April 9, 1943.

Mr. Henry: Again, to save time and the necessity, reserving my other objections, Mr. Charles, of your putting [12] in the full text of the minutes, the approval of the minutes by the Board of Directors which contains the text only as follows:

"The minutes of the meeting of the Board of Directors of December 9, 1942, and the minutes of the meetings of the Executive Committee of December 11, 12, 15, 16, 18, 22, 23, 29, 31, 1942."

and then some other dates after that appearing on through the last one of April 7, 1943, "were approved."

(Deposition of Matthias W. Knarr.)

That is the only reference with respect to the subject matter here.

In other words, there was no discussion, but merely the statement that they were approved?

Mr. Charles: That is correct, and it is so stipulated.

Mr. Henry: I will ask, Mr. Charles, if I may at this time, that the same stipulation will run to the approval, if I missed a particular reference, of the minutes of the Executive Committee of October 2, 1944, contained in the minutes of the Board of Directors and is merely the reference to meetings held on October 2, 1944, by the Executive Committee and approval of those minutes without any other discussion or text.

Mr. Charles: That is correct.

Q. (By Mr. Charles): Mr. Knarr, can you state whether or not the release [13] of December 30, 1942, has been rescinded or modified by the War Damage Corporation?

A. I have no recollection that it has been rescinded or modified.

Q. And if it has been rescinded or modified, would you have any record of it?

A. Yes, I would.

Q. Mr. Knarr, could you tell us whether the charter of the War Damage Corporation has at any time been amended? If so, when, and by what amendments?

A. It was amended as of March 30, 1942.

(Deposition of Matthias W. Knarr.)

Q. And that was the time when the name of the corporation was changed from War Insurance Corporation, to War Damage Corporation, was it?

A. That is correct, and the amendment called for the fact that the name of the corporation shall be War Damage Corporation.

Q. Do you have a copy of that amendment?

A. I have a copy of the amendment here. It is further amended with respect to objects, purposes, and powers of the corporation.

Mr. Henry: I will object to the question as calling for a conclusion of the witness, and move that the answer be stricken; also that the best evidence is the charter, and the amendments themselves. [14]

Q. (By Mr. Charles): Mr. Knarr, the original charter of the War Damage Corporation was filed where?

A. The original charter was filed with the Federal Register.

Q. Are the amendments to the charter so filed, too?

A. The amendments to the charter are filed with and published in the Federal Register.

Q. Could you give us the dates of all amendments to the charter of the War Damage Corporation? That is, the dates when they were published in the Federal Register?

A. Yes, I could. The amendment of March 30, 1942, is published in the Federal Register of April 2, 1942, page 2531. That is identified as Volume 7, No. 64.

(Deposition of Matthias W. Knarr.)

Q. Was there any further amendment to the charter of the War Damage Corporation?

A. It was further amended on January 15, 1947. That appears in the Federal Register of January 21, 1947, at page 407.

Q. Could you tell us with what that amendment to the charter was concerned?

A. Yes. It amends paragraph 7 to read that the Corporation shall not have succession beyond January 22, 1947, except for purposes of liquidation (including the adjustment and payment, not later than June 30, 1947, of claims [15] duly presented under subsection (b) of Section 5g of the Reconstruction Finance Corporation Act, as amended).

Q. Are those the only two amendments to the charter?

A. They are the only two amendments to the charter.

Q. There are no others? A. No.

Mr. Henry: What is the volume reference of that, Mr. Knarr?

The Witness: Volume 12, No. 14.

Q. (By Mr. Charles): Mr. Knarr, may I ask you whether any form of policy was adopted by the War Damage Corporation?

A. Yes, there was a form of policy adopted by us.

Q. I show you what purports to be a WDC form No. 1, which appears on pages 13, 14 and 15 of Defendant's Exhibit 1, and ask you whether that is a

(Deposition of Matthias W. Knarr.)

true copy of the form of the policy adopted by the War Damage Corporation.

A. It is a true copy of the policy.

Q. Mr. Knarr, can you tell us what the relationship of War Damage Corporation is to the Reconstruction Finance Corporation and to the United States?

A. It was created by the Reconstruction Finance Corporation pursuant to law, and it is an instrumentality of the United States.

Q. Does it have any capital stock? [16]

A. It does.

Q. Who owns the capital stock?

A. The Reconstruction Finance Corporation.

Q. Does the Reconstruction Finance Corporation own all the stock?

A. It owns all the stock.

Q. Do you know whether Mr. Jesse Jones was Secretary of Commerce during all of the year 1941 and 1942?

A. He was Secretary of Commerce and he was appointed, according to the Congressional Directory, as Secretary of Commerce on September 19, 1940.

Q. And he continued to act as Secretary until about when? Was it in 1945?

A. He was succeeded as Secretary of Commerce by Mr. Wallace who, according to the Congressional Directory, entered on duty as Secretary of Commerce on March 2, 1945.

Mr. Charles: I think that is all.

(Deposition of Matthias W. Knarr.)

Cross-Examination

By Mr. Henry:

Q. Mr. Knarr, I wonder if we may refer to Defendant's Exhibit 4, a copy of which you have. That is the resolution of October 2, is it? A. Yes.

Q. I refer to the meeting's minutes.

With reference to Defendant's Exhibit 4, the minutes [17] of a meeting of the Executive Committee of the War Damage Corporation held on October 2, 1944, were you personally present at that meeting? A. I was.

Q. And throughout the entire period of that meeting? A. Yes.

Q. You will note in the minutes of that meeting appears the following statement on page 243?

“Mr. Klossner stated that a question recently had been raised by a claimant as to whether this Corporation might be under legal obligation to make compensation for the hulls, equipment, and cargoes of vessels lost by enemy attack while en route between ports of the United States and foreign ports, if such vessels were destroyed within three miles of the shores of the United States.”

I will ask you if you know who the claimant was that was referred to, and the subject of that statement that I have just read.

A. I don't know who the claimant was.

Q. As far as you know, that was the only claim at that time for compensation for cargo on a foreign voyage; is that correct?

(Deposition of Matthias W. Knarr.)

A. I could not answer that question.

Q. Do you know of any claim for compensation for the [18] hull of a vessel, or the vessel itself?

A. I could not answer that, Mr. Henry. Other people in the corporation were handling claim matters.

Q. You had nothing at all to do with the policy that was decided upon as embodied in this meeting and resolution that I have just referred to?

A. No, sir.

Q. Do you know whether in the minutes of any other meeting, of either the Executive Committee or the Board of Directors of the War Damage Corporation there is any reference to claims by the owners of vessels lost prior to July 1, 1942, by enemy action, which vessels were in transit on en route between American ports?

A. Do I know of any references in the minutes?

Q. That is right.

A. I would have to look that up. I could not say offhand.

Q. Do you have any independent recollection of any such discussion that occurred at a meeting either of the Executive Committee or the Board of Directors of the War Damage Corporation?

A. Again, I would have to look up the record.

Q. I am simply asking whether you have any recollection.

A. No, sir. [19]

Q. Do you recall addressing a letter under date of January 19, 1945, to the Matson Navigation Com-

(Deposition of Matthias W. Knarr.)

pany, under your signature, Mr. Knarr, relating to the claim for the loss of the steamship Lahaina?

A. I would have to refer to the record.

Q. You have no independent recollection of having sent such a letter? A. No, sir.

Q. I wonder if we may see the minutes of the War Damage Corporation's Executive Committee and Board of Directors for the period from December 29, 1944, to January 19, 1945.

(The documents referred to were produced by the witness.)

Q. (By Mr. Henry): Mr. Knarr, the Regulations A, Defendant's Exhibit 1, effective July 1, 1942, have no reference at all to the losses that might have occurred between December 6, 1941, and midnight of June 30, 1942; is that correct?

Mr. Charles: I object to the question on the grounds it is not clear. It does not appear from the question as to whether the question seeks the witness to state whether anything in the Regulation itself states what is applicable, or whether the question asks for the witness's own knowledge as to the applicability of regulations, aside from what [20] appears in that document.

Mr. Henry: The witness can only testify as to what he himself knows, Mr. Charles, so I submit that the question is clear and I will ask for an answer.

The Witness: The Regulations A relate to the insurance program which went into effect on July 1, 1942.

(Deposition of Matthias W. Knarr.)

Q. (By Mr. Henry): In other words, it does not relate in any way to the so-called free insurance period prior to July 1, 1942?

A. It relates to the program of insurance that went into effect on July 1, 1942.

That is the program of insurance.

Q. That was on insurance policies issued and premiums paid?

A. Yes. That was insurance for policies issued and premiums paid.

Q. And that is true, also, is it not, of these amendments, Exhibits 2 and 3 to Regulations A?

A. Yes.

Q. In other words, it related to the period after July 1, 1942, for the insurance program under policies issued and premiums to be paid?

A. Yes.

Q. No policies of insurance were issued to cover any losses prior to July 1, 1942; is that correct?

A. That is correct.

Q. That is, no written policy was ever issued for any of those losses that may have occurred in that period prior to July 1, 1942?

A. That is correct.

Q. What is the capital of the War Damage Corporation?

A. I would have to refer to the record. The total authorized capital stock of the corporation shall be \$100 million. That is pursuant to the charter, paragraph 6.

Q. Was that ever amended?

A. That was never amended.

(Deposition of Matthias W. Knarr.)

Q. Yet, under the amendment to the Reconstruction Finance Corporation Act, the so-called Section 5g adopted in March of 1942, the funds to be supplied or that might be supplied to the War Damage Corporation were increased within the authorization to \$1 billion. Is that correct?

A. I think the law would speak for itself there.

Mr. Henry: I assume you will so stipulate and save the necessity of having the witness answer?

Mr. Charles: Yes. I will stipulate that the statute will speak for itself.

Q. (By Mr. Henry): Mr. Knarr, approximately how much in premiums for the period following July 1, 1942, was collected by the War Damage Corporation?

Mr. Charles: I object to the question on the grounds it [22] is incompetent, irrelevant, immaterial, and does not relate to any of the issues in the case.

The Witness: I do not have the record here. The Treasurer maintains the records relating to premiums received.

Q. (By Mr. Henry): Is it correct, Mr. Knarr, that there is approximately \$200 million of surplus at the present time of premiums received over losses and expenses paid by the War Damage Corporation?

Mr. Charles: The same objection.

The Witness: The Secretary keeps no records. The Treasurer keeps the records and I could not answer that question.

(Deposition of Matthias W. Knarr.)

Q. (By Mr. Henry): Are you familiar with any suits that are pending against the War Damage Corporation?

A. I am not familiar with them.

Q. You do not know of any suit that has been brought by former policyholders to require a refund of some approximately \$200 million of excess funds from premiums received?

Mr. Charles: The same objection.

The Witness: The General Counsel would have to answer that.

Q. (By Mr. Henry): You have no knowledge at all? [23]

A. That is a matter that does not come within the purview of the Secretary's Office.

Q. You have no knowledge at all of such a suit?

A. I think I have seen papers to that effect.

Q. Do you have a copy of the by-laws of the War Damage Corporation? A. Yes, sir.

Q. I wonder if I might see those.

(The witness produced the by-laws of the War Damage Corporation.)

Q. (By Mr. Henry): Are there any amendments to these by-laws?

A. I don't think so, but I will have to check that.

Q. Mr. Knarr, you have submitted to me what purports to be copies of the minutes of the Reconstruction Finance Corporation, containing the text of the by-laws adopted by the War Damage Corporation. Such by-laws are as originally adopted on

(Deposition of Matthias W. Knarr.)

December 13, 1941, with the exception of an amendment adopted on May 21, 1946, which related only to the amendment of Section 14 of the original by-laws, changing to a fiscal year from a calendar year, that is, going from July 1 to June 30 of each year?

A. That is correct.

Q. I wonder, Mr. Knarr, if you would be kind enough to furnish to me, or to Mr. Charles, a copy of those by-laws [24] as appear beginning on page 637 and ending on page 641 of this minute book which you have handed me.

A. Yes, sir.

Q. That is, paragraphs 1 through 20, inclusive, which constitute the by-laws?

A. All right.

Mr. Henry: That is all.

Redirect Examination

By Mr. Charles:

Q. Mr. Henry asked you, I believe, if you had written a letter dated January 19, 1945, to Matson Navigation Company declining its claim. I should like to refer you to the minutes of January 19, 1945, of the Executive Committee of the War Damage Corporation and ask you whether you were authorized to send a letter declining the claim to Mr. Melvin Price, Matson Navigation Company, 215 Market Street, San Francisco, California?

A. On that date they did authorize me to send a letter to Matson Navigation Company at 215 Market Street, San Francisco.

Q. Would you be good enough to read that letter?

(Deposition of Matthias W. Knarr.)

Mr. Henry: I will stipulate only that the letter is a copy of the same text or has the same text as is attached to the complaint of Matson Navigation Company in this action.

Mr. Charles: That will be sufficient. [25]

Mr. Henry: I suppose I could carry that stipulation a little further than in these minutes to which you have referred of the Executive Committee of the War Damage Corporation for January 19, 1945, the only text relating to this letter is the text of the letter itself, and the following statement appearing on the minutes immediately preceding the text of the letter:

“The Executive Committee authorized the Secretary to send the following letters”——

And then appears the letter that was authorized, the one addressed to Mr. Price, and then a number of other letters, two of them, to other people, having no bearing or reference to the subject in litigation here?

Mr. Charles: That is correct. We will stipulate to that.

Q. (By Mr. Charles): Do you know, Mr. Knarr, what if any publications were given to the release dated December 30, 1942, which is Defendant's Exhibit No. 5?

A. What publicity was given to it?

Q. Yes.

A. It was released to the press and carried by the press or those who might publish it.

Mr. Charles: I think that is all. [26]

(Deposition of Matthias W. Knarr.)

Recross-Examination

By Mr. Henry:

Q. In connection with Mr. Charles' last question, Mr. Knarr, you have no knowledge of how extensively this press release was actually reprinted or published by the press, do you?

A. I would have no knowledge of that.

Q. As far as you know, there was no action taken with respect to that press release other than to release it to the press; is that correct?

A. That is correct.

Mr. Henry: I think that is all.

Mr. Charles: I believe that is all.

/s/ MATTHIAS W. KNARR.

Subscribed and sworn to before me this 28th day
day March, A.D. 1947.

[Seal] /s/ LLOYD L. HARKINS,

Notary Public in and for the
District of Columbia.

My commission expires August 14, 1947. 27]

ROBERT C. GOODALE

a witness of lawful age, was thereupon duly sworn
and, being examined by counsel, testified as follows:

Direct Examination

By Mr. Charles:

Q. Will you state your name for the record,
please? A. Robert C. Goodale.

(Deposition of Robert C. Goodale.)

Q. Mr. Goodale, are you an officer of the War Damage Corporation? A. Yes.

Q. Are you General Counsel? A. Yes.

Q. Can you tell us when you were first occupied with any of the affairs of the War Damage Corporation? A. Almost from its inception.

Q. Can you tell us about when you became Assistant General Counsel of the War Damage Corporation?

A. I became Assistant General Counsel about the beginning of the year 1943.

Q. But prior to that date you have been with the Reconstruction Finance Corporation?

A. Before that time and throughout the entire period of the organization of the War Damage Corporation, I was one of the counsel for the Reconstruction Finance Corporation, of which the War Damage Corporation is a subsidiary. A part [28] of my duties as counsel for the Reconstruction Finance Corporation was, on request, to assist in work of the War Damage Corporation.

Perhaps I should make that more clear if I mentioned that the War Damage Corporation has had, throughout its existence, very few, if any, full time employees, possibly two or three.

I do not know that there have been that many, but its work has been done almost entirely by borrowing the employees of the Reconstruction Finance Corporation.

Q. Mr. Goodale, are you familiar with the administration of the War Damage Corporation?

A. Yes.

(Deposition of Robert C. Goodale.)

Q. Are you familiar with the legislative history of the War Damage Corporation?

A. Reasonably so, yes.

Q. Are you familiar with the regulations passed by the War Damage Corporation? A. I am.

Q. Do you have access to the records and files of the War Damage Corporation? A. I do.

Q. Are you familiar with the administration of the Act from the organization of the corporation to the present day? [29] A. Yes.

Q. Can you tell us whether, as General Counsel, you have anything to do with the payment of claims under the Act?

A. I do. All claims that are submitted to the Board contain a recommendation from the Legal Division as to payment. That recommendation may be made by me or an Assistant General Counsel.

Q. Do you have one or more assistants who help you in connection with this work?

A. There is an assistant general counsel, a Mr. Woolman, who does a part of the work. There is frequent consultation between us.

Q. Are you familiar with the action which the corporation has taken with reference to allowing or disallowing claims of different types of property?

Mr. Henry: I object to the question as calling for a conclusion of the witness, is incompetent, irrelevant, and immaterial, and not the best evidence.

Q. (By Mr. Charles): Are questions concerning the payment or nonpayment of claims submitted to you for your recommendation? A. Yes.

(Deposition of Robert C. Goodale.)

Q. Is that so with respect to claims arising under the free protection provisions of the statute, namely, subdivision (b) as well as under the insurance program of the statute, [30] subdivision (a)?

A. Yes.

Perhaps I should make this clarification: That with respect to the claims under policies of insurance, there is a provision in the regulations for the War Damage Corporation for making payment without papers being forwarded to Washington in cases in which there appear to be no legal questions.

Q. Have you been, as General Counsel, supervising this litigation on behalf of the War Damage Corporation with which we are concerned here?

That is, the suits brought by the Matson Navigation Company against the War Damage Corporation?
A. In a general way, yes.

Q. Can you tell us approximately what time the first claim under subdivision (b) of Section 5-G of the Reconstruction Finance Corporation Act was paid or adjusted?
A. In February, 1943.

Mr. Henry: I object to the question as incompetent, irrelevant, and immaterial, having no bearing on the issues in this case.

The Witness: Shall I answer that?

Mr. Charles: Yes.

The Witness: In February, 1943.

Q. (By Mr. Charles): Do you know whether the War Damage Corporation has [31] excluded any types of property from the coverage otherwise provided for by Section 5-G of the Reconstruction Finance Corporation Act?

(Deposition of Robert C. Goodale.)

Mr. Henry: I object to the question as incompetent, irrelevant, and immaterial, calling for a conclusion of the witness, and not within any of the issues of this case; and, furthermore, as calling for a self-serving declaration, and is an interpretation which is for the courts to decide under the statute.

The Witness: Do you want an answer?

Mr. Charles: I will ask another question.

Would you read the question back, Mr. Reporter?

(The pending question, as heretofore recorded, was thereupon read by the reporter.)

The Witness: Yes, it has.

Q. (By Mr. Charles): Mr. Goodale, are you familiar with the Regulations A adopted by War Damage Corporation? A. Yes.

Q. Can you tell us to what extent, if any, those regulations were followed with respect to claims arising under subdivision (b) of Section 5-G, relating to the free protection provisions?

Mr. Henry: In order to avoid any unnecessary delays, will you stipulate that my objections run through the entire [32] line of questioning which you are putting here, relating to the action by Mr. Goodale or the War Damage Corporation and on other matters or other attempts to construe the statute?

Mr. Charles: Yes. The objections which you have made may be deemed to go to all questions, except, of course, as to form.

(Deposition of Robert C. Goodale.)

Mr. Henry: I make the objection for the double purpose. While the objections are reserved, nevertheless, the question may be considered in its form as calling for the conclusion of the witness and calling for matters as I have mentioned in my preceding objections and are incompetent, irrelevant and immaterial, and not within the issues of this case, and are attempts to call for the conclusion of the witness.

I want to be sure that as far as the form of the question is concerned, I would not be foreclosed in any way.

Mr. Charles: The only thing I want to make certain is that any objections that go to the form can be cured if I knew what the nature of the objection was that would be made.

Mr. Henry: The objections as to form, as far as the questions being leading, of course, I will be foreclosed on the leading character of the questions.

If you would prefer, I will raise the objections and probably it will not take much longer so that there will not be any misunderstanding.

Mr. Charles: I think it would be preferable if you would [33] raise the objections that may relate to the form of the questions so that I could take the precaution of curing the objection.

Mr. Henry: All right, then.

(The pending question, as heretofore recorded, was thereupon read by the reporter.)

The Witness: They were followed.

(Deposition of Robert C. Goodale.)

The only exception that I recall related to the protection for cargoes at sea, where the protection was extended under the free program to such cargoes en route between ports situated in the United States or its possessions.

Q. (By Mr. Charles): Do you know why that exception was made?

Mr. Henry: I object to the question as calling for a conclusion of the witness.

The Witness: Yes.

Q. (By Mr. Charles): Would you state what that reason was?

Mr. Henry: Same objection.

The Witness: Because it was universally concluded that the legislative history of the Act and the language of the Act together indicated Congressional intention that free protection should extend to goods in transit.

It was not believed that Congressional intent was that such protection should be extended to hulls during the free [34] period.

Q. (By Mr. Charles): Can you state whether the corporation excluded any types of property other than the hulls of ships from its protection granted under Section 5-G(b)?

A. It excluded many other types of property.

Q. Could you give us an illustration of some of those other types of property?

A. Currency, curiosity, antiques, and also furs and jewelry of a value together in excess of \$1,000 on any one claim. Those were some of the main ones. There were many others.

(Deposition of Robert C. Goodale.)

Q. And the corporation adopted a resolution, did it not, on October 2, 1944, excluding certain types of coverage from the protection of subdivision (b) of the Act relating to free protection?

Mr. Henry: I object to the question as calling for a conclusion of the witness and not the best evidence.

Furthermore, it calls for a self-serving declaration as to a matter that was adopted some two years and nine or eleven months after the loss in question here, and have no retroactive effect upon the claims by Matson Navigation Company in this proceeding.

The Witness: It did. [35]

Q. (By Mr. Charles): Can you tell us, if you know, what the purpose of the corporation was in the adoption of that resolution?

Mr. Henry: I object to the question as calling for a conclusion of the witness; it is speculation, not the best evidence, and it is not within the issues of this case and calls for a self-serving declaration.

The Witness: The resolution was almost wholly declaratory of a practice that had existed from the commencement of the activity of the corporation. Its purpose was mainly to place of record and formalize the action we had already carried into effect in the actual day-to-day administration of the Act.

Q. (By Mr. Charles): Can you tell us whether, in the handling of the claims under section (b) of the Act the corporation conformed to the pro-

(Deposition of Robert C. Goodale.)

visions of that resolution of October 2, 1944, which was offered in evidence in connection with another deposition taken today, that of the Secretary, Mr. Knarr?

Mr. Henry: Object to the question as calling for a conclusion of the witness; it is incompetent, irrelevant, and immaterial, and calls for a self-serving declaration.

The Witness: It did.

Q. (By Mr. Charles): Are you familiar with the practices that have been [36] followed by the War Damage Corporation in the adjusting and payment of claims under the free protection provisions of the Act? A. Yes, I am.

Q. Can you state whether certain types of property have been constantly excluded by the corporation from the free protection provisions of the Act?

Mr. Henry: I object to the question as calling for a conclusion of the witness and not the best evidence, and calling for a self-serving declaration and is incompetent, irrelevant, and immaterial.

The Witness: They have been.

Q. (By Mr. Charles): Can you state the types of property that are excluded by the resolution of October 2, 1944, which were in practice excluded prior to the adoption of the resolution? [37]

Mr. Henry: I object to the question as calling for a conclusion of the witness, calling for a self-serving declaration, and is incompetent, irrelevant and immaterial.

(Deposition of Robert C. Goodale.)

The Witness: They were, to the best of our ability. Of course, in the practical administration of the free program, it is inevitable that situations arise in which it is difficult to draw a line.

For example, what is a curiosity?

Or sometimes there is a question as to whether shell ornaments are a useful article and should be paid for, or whether they are a curiosity. There may have been instances in which adjusters have had diverse opinions on borderline cases of that sort.

Aside from that, there has been, to the best of our ability, a completely uniform exclusion in practice of all classes of property that were excluded by the resolution of October 2, 1944.

Q. (By Mr. Charles): Is that uniform exclusion continued to the present day?

A. It has continued to the present day and is in effect at this time. It is a matter of daily application.

Q. Can you state, Mr. Goodale, whether any claims for loss of ships have been paid at any time by the War Damage Corporation? [38]

A. None have been.

Q. Would it be correct to say that no claims for loss of ships have been paid under the free protection provisions of the Act?

A. That is correct.

Q. Can you tell us how many claims, if any, have been made for the loss of ships against War Dam-

(Deposition of Robert C. Goodale.)

age Corporation, what those claims were, and what, if any, disposition has been made of those claims?

A. Three such claims have been made. Two on the West Coast and one on the East Coast.

The first claim presented on the West Coast was the claim of the Union Oil Company for the loss of the ship Montebello. That claim was denied by the Board. Subsequently suit was brought, the case was tried in San Francisco and the verdict for the defendant was rendered by the jury.

The other case on the West Coast is the case now at bar, in which this deposition is being taken.

The only other ship case and the only ship claim presented on the East Coast was the claim of the owner of the schooner Aeolus. That claim was denied.

Q. Have any claims on ships been paid by the War Damage Corporation? A. No.

Q. Do you know at the time of the resolution of October [39] 2, 1944, was adopted, the corporation had received a claim from the Matson Navigation Company for the loss of the Lahaina?

A. It had not, so far as I know, and I think I would know from the files if we had received it.

Q. Do you know whether the War Damage Corporation has at any time in the administration of the Act conferred with insurance experts—that is, men experienced in the field of insurance?

A. It has, regularly and systematically.

Q. Do you know whether there was any such conferring prior to the time when the Act was

(Deposition of Robert C. Goodale.)

adopted? That is, Section 5-G of the Reconstruction Finance Corporation Act?

Mr. Henry: I object to the question as calling for hearsay; not the best evidence, the time, place and action are not fixed—the question is vague and indefinite and calls for self-serving declaration and an attempt to invade the province of the Court, which is the only forum that could construe the statute.

The Witness: I know that it has, and before that date the officials of the Reconstruction Finance Corporation did so confer.

Q. (By Mr. Charles): Do you know whether any insurance experts conferred or advised with the corporation in connection with the drafting of the Regulations A? [40]

Mr. Henry: The same objection, Mr. Charles.

The Witness: Regulations A was discussed in detail, line by line, at a meeting somewhat before July 1, 1942. At that meeting there were present a considerable number of men from the insurance industry, possibly half a dozen or more, including Mr. Hurd and Mr. Christensen.

Q. Where did that meeting take place?

A. Both of those men are officials of the War Damage Corporation, and that meeting took place here in the Reconstruction Finance Corporation building in Washington, D. C.

Q. Can you tell us whether the War Damage Corporation officials made any interpretation of the terms "property in transit" as they appear in the statute?

(Deposition of Robert C. Goodale.)

Mr. Henry: I object to the question as calling for a conclusion of the witness, a self-serving declaration, not within the proper province of any witness to invade the province of the court. The statute is clear and if there is any question of statutory construction, it is for the Court and not for the witness to determine.

The Witness: It has been considered to apply to cargo and also to personal effects of passengers not carried as cargo or under a bill of lading. Also, to shipments by mail or otherwise on vessels that was not entered as cargo. [41]

Q. (By Mr. Charles): Do you, as counsel, have anything to do with the advising of the Board of Directors of the War Damage Corporation concerning the meaning of the words "property in transit"?

Mr. Henry: I object to the question on the grounds previously stated, unless you want me to repeat it, Mr. Charles.

Mr. Charles: It is not necessary.

The Witness: I had occasion to, from time to time.

Q. (By Mr. Charles): Did you take into account, in advising on the meaning of the words "property in transit" the legislative history of Section 5-G? A. Yes.

Q. Could you tell us, Mr. Goodale, whether the War Damage Corporation has paid subrogated claims of insurance companies? A. It has not.

(Deposition of Robert C. Goodale.)

Q. Can you tell us whether it has at any time received claims of insurance companies under the free protection provisions of the Act?

A. Such claims have been either presented directly by the insurance companies or by other claimants with knowledge on the part of the War Damage Corporation that only relate to the claims being presented for the benefit of the insurance companies. [42]

Q. Has the corporation denied all such claims?

A. It has.

Q. Do you know, Mr. Goodale, whether the proponents of the bill which became Section 5-G of the Reconstruction Finance Corporation Act had any connection with the War Damage Corporation, and if so, what that connection was?

Mr. Henry: I object to the question as incompetent, irrelevant, and immaterial, calling for hearsay, and calling for a self-serving declaration and an attempt to invade the province of the Court.

The Witness: The report on Section 5-G of the bill which was sent to the Senate was prefaced by the spokesman for the Senate Committee with a statement that he understood the bill had been suggested by Mr. Jones. That is my understanding of it.

Q. (By Mr. Charles): Did you have any firsthand knowledge as to whether Mr. Jones had any association at that time with the Reconstruction Finance Corporation? A. Yes, I did.

(Deposition of Robert C. Goodale.)

Q. Can you tell us, Mr. Goodale, whether the corporation, in paying claims, has paid the full market value of property or has, in any situation, adopted any different standard?

Mr. Henry: I object to the question as calling for a [43] self-serving declaration and incompetent, irrelevant, and immaterial.

The Witness: It has, in some classes of cases, adopted different standards.

Q. (By Mr. Charles): Can you tell us what amounts have been paid in connection with the loss of jewelry under the free protection provisions of the statute?

A. Such claims have been limited to amounts not in excess of \$1,000 for jewelry and furs of the same claimant. Very few, if any, claims have been asserted for jewelry in the amount of \$1,000, and I cannot say with certainty without a special check of the records whether there have been instances in which the \$1,000 limitation on jewelry came into effect on the free provision.

Q. Was there such a limitation as \$1,000 on policies issued by the War Damage Corporation under Section (a)?

A. There was a limitation that unless specifically described in the policy, jewelry and furs would not be covered in an amount in excess of \$1,000 for both categories, and that same rule has been consistently considered as applicable to free compensation.

(Deposition of Robert C. Goodale.)

However, there has been a very careful check of all claims for jewelry, primarily as a precaution against possible fraud or imposition, and there have been very few instances [44] in which claims for jewelry were made in an amount that would bring the \$1,000 limitation into effect.

Q. Do you know whether the corporation has paid the full market value on claims for loss of merchandise under the "in transit" provision of Section 5-G?

A. It has not followed the policy of paying the full market value of such property. It has adopted the recommendation of its Marine adjusters, which is the basis of paying the amount not in excess of the cost of such property to the owner making the claim.

In other words, if a claim was made by a manufacturer for goods shipped to his customer, the manufacturer would be allowed only the cost of the goods, even though that might be only half of the sale value.

Q. Do you know whether the corporation has at any time taken into consideration, in the consideration or adjustment of a loss, the extent to which the claimant may have received the benefit through taking of a tax deduction?

Mr. Henry: I object to the question as incompetent, irrelevant, and immaterial, calling for a self-serving declaration, and not within the issues of this case.

(Deposition of Robert C. Goodale.)

The Witness: Our adjusters have recommended that any such tax deductions be taken into account and the Board has, in connection with the only claim of a corporation that has come up to my knowledge since the repeal of the excess profits [45] tax, announced to the claimant that the amount allowed, if any, would not exceed the loss, with appropriate allowance for any benefits received by reason of the loss under the excess profits tax law.

That was action by the Board of Directors.

Mr. Charles: I think that is all.

Cross-Examination

By Mr. Henry:

Q. Mr. Goodale, if I understand correctly on the losses during the so-called free period that were paid for Marine property,—you mentioned cargo that was in transit—in your adjustment of these losses and final payments, am I correct in assuming that you were trying to make the property owner whole without giving him a profit on whatever transaction may have been involved?

A. We are attempting to apply the insurance principle, that insurance is intended to be limited to indemnity.

Q. So it was actual loss rather than a profit that you were willing to cover; is that correct?

A. Yes.

Q. There was not any arbitrary determination in connection with these Marine cargoes that you

(Deposition of Robert C. Goodale.)

paid, that you were not paying above a certain fixed amount in dollars? A. There was not.

Q. Yes. [46]

A. That is correct.

Q. So it differed from the policy that you had with respect to jewelry, or such items, that you were limiting it to \$1,000?

A. It is different from that.

Q. That was not involved in any way with such Marine losses as you did pay; is that correct?

A. Yes.

Q. You mentioned the Montebello case, Mr. Goodale. It is a fact, is it not, that the verdict of the jury in that case was determinative in favor of the War Damage Corporation as defendant, because of the fact which was established and found by the jury that the loss of the Montebello, that is, the torpedoing of the Montebello, occurred outside of the Continental United States; isn't that correct?

A. That is correct, sir, except your statement that that was found by the jury. I do not remember that it was in the special verdict. I remember only the general verdict in favor of the defendant.

Q. That was the only issue that was before the jury; isn't that correct? A. That is correct.

Q. The Montebello, unlike the Lahaina, was not traveling, or was not on a voyage, or the way I choose to word it, not "in transit" between American ports, or ports [47] of possessions of the United States? A. I believe it was not.

(Deposition of Robert C. Goodale.)

Q. May I refresh your recollection in that regard, that the Montebello was bound on a voyage from California to British Columbia?

A. My recollection is already perfectly clear on that point.

Q. You are familiar, are you not, with the briefs that were filed by the parties in that action?

A. Yes.

Q. Do you recall the contention being made in that action in the brief on behalf of the War Damage Corporation that the Montebello, being "in transit" between a California port and Vancouver, British Columbia, could therefore not come within the protection of property in transit?

Mr. Charles: I object to the question.

Mr. Henry: Under the wording of the Act, which is confined to property in transit between American ports or ports of American possessions?

Mr. Charles: I object to the question on the ground that it is purely argumentative, has nothing to do with the issues, is not proper cross-examination, and what may have been given by way of illustration in another brief has certainly no bearing on this case or any phase of it.

Mr. Henry: Will you instruct the witness not to answer? [48]

Mr. Charles: I have no objection to the witness answering if he happens to know what may have been said, but I reserve my objection.

Mr. Henry: Indeed.

(Deposition of Robert C. Goodale.)

The Witness: It is my impression that that question was raised in the briefs in that case.

Q. (By Mr. Henry): The reason, if there was a reason for restricting on jewelry or such other claims the amount that would be paid by the War Damage Corporation, was not because of any lack of funds available or in the War Damage Corporation to pay the full amount of such loss?

A. No.

Q. In other words, there have always been sufficient funds to cover the losses. Is that correct?

A. To cover the losses that have been presented other than Philippine losses. As to whether there were sufficient funds to cover losses in the Philippine Islands, which the War Damage Corporation was authorized pay under section 5-G, the Philippine War Damage Commission is now handling it, and that is another matter.

I am not so sure there were sufficient funds for that purpose.

Q. The policy, however, that was developed, as you testified with respect to more or less arbitrary limitation on the amount of recoveries was not because of any lack of [49] funds?

A. I think not.

Q. In the War Damage Corporation?

A. I think not.

Q. Incidentally, do you know what the present assets of the War Damage Corporation are?

A. Somewhere in the neighborhood of \$230 million dollars.

(Deposition of Robert C. Goodale.)

Q. And that represents largely the excess of premiums over the payment on losses?

Mr. Charles: I object to the question on the ground that it is immaterial to any of the issues of the case, and not proper cross-examination.

The Witness: Yes.

Q. (By Mr. Henry): It is a fact that there is on file in one of the District Courts of the United States at the present time an action against the War Damage Corporation to attempt, on behalf of the former policyholders or premium payers to recover and return to the public that participated in the coverage, this excess fund?

Mr. Charles: I want to object to that on the ground that it is incompetent, irrelevant, and immaterial, it has no bearing on any of the issues in the case. It has nothing to do with the interpretation of the statute. It is not proper cross-examination, and the only purpose that I can see [50] would be to prejudice the defendant's position.

The Witness: Two such actions are pending, both purporting to be brought in behalf of the former and present policyholders.

Q. (By Mr. Henry): Mr. Goodale, did you have any experience with Marine insurance prior to the adoption of the War Damage Corporation?

A. Yes.

Q. In what connection, please?

A. I tried two, possibly more, such suits, for the London Insurance Corporation on the West Coast.

(Deposition of Robert C. Goodale.)

In fact, that was many years before I came to the War Damage Corporation.

Q. Were you an admiralty attorney before you came with the War Damage Corporation?

Mr. Charles: I object to the question on the ground that it is argumentative, and irrelevant.

The Witness: Those were admiralty cases.

Q. (By Mr. Henry): Perhaps I am being a little presumptuous for what I refer to as the admiralty bar. I think that they are, in large part, attorneys who are without the real justification for the title that they give themselves. That is, members of the admiralty bar, but I am trying to determine from you [51] whether you had had any extensive experience with Marine insurance prior to the adoption of the War Damage Corporation Act.

A. I have never specialized mainly in Marine matters. I have handled such as came to me or to my firm that were assigned to me from time to time.

Q. As far as you can recall, there were two or three so-called Marine insurance cases that you had tried?

A. I recollect two or three that I tried and a considerable number of others in which we appeared for the insurer.

Q. What firm was that?

A. I was then a member of the firm of Bausman, Kelleher, Oldham & Goodale.

Q. When did you leave our very attractive West Coast?

A. When I went to the Presidio Training Camp in 1917 or 1918.

(Deposition of Robert C. Goodale.)

Q. And that was your last connection with any admiralty or any Marine insurance practice; is that correct?

A. I do not remember whether I had any Marine matters when I was in New York, or not.

Q. They would be somewhat incidental in connection with a general practice; is that correct?

A. Yes.

Q. Did you consult personally with any members of [52] Congress, that is, of the House of Representatives or members of the Senate in all the legislation and proposed legislation that ultimately was adopted under the War Damage Corporation Act?

A. Do you mean in advance of the adoption of the Act?

Q. Yes. A. No.

Q. You said that you were at least somewhat familiar with the legislative history of this amendment which we call the War Damage Corporation Act. A. I did.

Q. Mr. Goodale, in connection with that familiarity that you have, did it extend to a review of the proceedings on the floor of the House of Representatives or of the Senate as appears in the Congressional record? A. Yes.

Q. Are you familiar with the following statement appearing at page 2658 of the Congressional Record, Volume 88, Part 2, for the 77th Congress, Second Session:

“Mr. Smith of Ohio: Under the temporary arrangement until the contracts are written,

(Deposition of Robert C. Goodale.)

say, July 1, are the sinkings that are taking place at the present time covered by the temporary arrangement?

“Mr. Steagall: Yes.”

A. Yes. [53]

Q. Now, is it your understanding that this reference in this quotation that I have just made to the sinkings that are taking place would be sinkings of vessels in the course of the war which was then actively in progress? Is that correct?

A. I think it refers to the sinkings of cargo in transit between American points and points in American possessions.

Q. But not to the sinkings of the vessels itself?

A. Not for the protection of hulls.

Q. That is your interpretation of it; is that correct? A. That is correct.

Q. Referring again to the Congressional Record in the proceedings on the floor of the House on March 2, 1942, at page 1847 of this same volume that I have referred to, I will ask you whether you are familiar with the following statement that appears in the record of the proceedings on that date:

“Mr. White: Does this war insurance corporation apply to cargoes and ships on the high seas?”

“Mr. Steagall: Yes, under certain conditions.”

Are you familiar with that statement?

A. Yes.

(Deposition of Robert C. Goodale.)

Q. Now, in the last quotation that I read, Mr. Goodale, Congressman White mentioned not only cargoes, but also ships. Do you contend that there was not in the mind of the Congressman [54] at time that it would cover anything except cargoes?

A. Have you read the next question and answer after that? I think you will understand it by the nature of the answer that was made. The substance of the answer was this:

The question was asked, "Did it cover cargoes and ships?" The man who was asked the question said, "Yes," and then he was asked another question, and he said, "I would like to make a further explanation of that," and for the explanation he referred his interrogator to a member of the committee in charge of Marine legislation.

In other words, he referred both the preceding question which you have just read, and the succeeding question which you have not read to a member more familiar than he with the true interpretation of Section 5-G in that record.

In answer to that reference, he got not a yes, but a no statement. He said that those sorts of losses would be taken care of by the Maritime Commission and not by the War Damage Corporation.

Q. Mr. Goodale, isn't it a fact that the reply for the other comment was made by Mr. Bland, who I assume is the gentleman to whom you referred as having a connection with the Merchant Marine and Fisheries Committee at that time was prospective

(Deposition of Robert C. Goodale.)

only with respect to what would be done not for the period prior to the colloquy on the floor of the House here, but for the period subsequent, if and when more [55] extended legislation for the Maritime Commission was adopted?

A. There is no such information in the Congressional Record.

Q. Let me read you this statement, Mr. Goodale, which follows the first statement made by Mr. Bland after this question and answer that I just read to you. The question was by Mr. White and the answer was by Mr. Steagall.

“Mr. Bland: Things like that are being taken care of under the War Insurance Bill, which was extended today. I have just put into the basket a report on the amendment to that bill which covered every phase of the Marine liability and risk.”

Mr. Charles: I want to object to that question on the ground that the legislative history speaks for itself; that this line of questioning is wholly argumentative and not proper cross-examination.

Mr. Henry: Do you instruct the witness not to answer?

Mr. Charles: No, I do not have to instruct my witness not to answer.

Mr. Henry: May I have an answer, please?

Do you want the question repeated?

The Witness: Yes.

(The pending question, as above recorded, was thereupon read by the reporter.) [56]

(Deposition of Robert C. Goodale.)

Q. (By Mr. Henry): Isn't it a fact, Mr. Goodale, that that statement that I have just read from Mr. Bland applies to legislation to be adopted rather than legislation that had been adopted?

A. That statement does, yes.

Mr. Charles: None of the legislation had been adopted at the time.

Q. (By Mr. Henry): I will refer you to one more section of the Congressional Record here, Mr. Goodale.

With particular reference to this so-called free period or the period during which there would be automatic coverage but no premium paid or policy issued, I ask you whether you are familiar with the following statement. This appears at page 2660 of the same volume to which I am referring:

“Mr. Smith of Ohio: Hearings on this bill”——

Referring to the War Damage Corporation Bill——

“by the Banking and Currency Committee were held on the second, third, fourth, and fifth of January. The question was raised seriously in the committee as to whether it might not be feasible to provide for the payment of premiums on property which might be lost up to the time of the writing of the insurance contracts. At that time we were not thinking of any damage except that which occurred at Pearl Harbor. The committee for [57] some reason took no action on requiring such premium payments.

(Deposition of Robert C. Goodale.)

Since that time, we have had an immense amount of sinkings. I would like to have an expression from the gentleman from Alabama as to whether we may not have made a mistake in not providing for premium payments on property which might be destroyed up to the time when actual contracts can be written.

“Mr. Steagall: Of course, that is a matter that is past. What the conference does is to embody the House provision in that respect, so that the matter is closed.”

Are you familiar with that? A. Yes.

Q. Isn't it your understanding, Mr. Goodale, that by that statement, the Congressman, Mr. Steagall, who was answering the question, was stating that as far as the free insurance period is concerned, the matter was closed, and the sinkings were covered without the payment of premium or issuance of a policy?

Mr. Charles: The same objection as I made before.

The Witness: If your question is as to whether the sinkings of hulls was covered without a policy, I do not so understand.

Q. (By Mr. Henry): But you do understand it as far as the sinking of [58] cargo?

A. I do.

Q. It was this same gentleman who spoke of the losses that I mentioned before, of ships and cargo; isn't that correct? A. Yes.

(Deposition of Robert C. Goodale.)

Q. Are you familiar, Mr. Goodale, with whether or not cargo insurance for war risk was available in the commercial market to any of the persons or companies who have been paid by the War Damage Corporation on losses of cargo arising from enemy action during this so-called free period prior to July 1, 1942?

A. I am not an expert on that question, but my understanding is that it was.

Q. So that all that you required from cargo claimants was assurance that they did not have any war risk insurance, but you did not require them to show that they were unable to obtain it?

A. We did not require them to show that they were unable to obtain it.

Q. And you understand as a fact, Mr. Goodale, at least the contention of the Matson Navigation Company in this proceeding is that they had no war risk insurance on the Lahaina?

A. That is my understanding. [59]

Q. So whatever action has been taken with respect to the claim of the Matson Navigation Company in this proceeding is not based upon the fact or contention on the part of the War Damage Corporation that Matson Navigation Company had war risk insurance on the Lahaina?

A. We have never had the opinion that the Matson Navigation Company did have war risk insurance on the Lahaina.

Q. But the denial of the claim was not because of any assumption on your part that the Matson

(Deposition of Robert C. Goodale.)

Navigation Company had war risk insurance on the Lahaina?

A. No. It was irrespective of that.

Q. I just wanted to make it clear that that was not the reason for the denial of the claim. That is correct, isn't it?

A. That is correct.

Q. Was there any action where the War Damage Corporation required a premium to be figured, computed, and paid by any claimant for the period from Pearl Harbor to July 1, 1942?

A. No.

Q. Did you ever issue a policy, let us say, retroactively or otherwise, to such a claimant, that is, for the period prior to July 1, 1942?

A. We never have.

Q. Now, with reference to this schooner *Aeolus*. Where was it lost? [60]

A. Off Maine.

Q. She was engaged in fishing, was she not?

A. Yes

Q. Do you think that she was lost inside or outside of the three mile limit?

A. Outside, I think.

Q. Was she bound to any other port than a port of the United States at the time?

A. No.

Q. Was she bound for any port, or was she on a fishing venture?

A. She was on a fishing venture.

Q. She was not bound for any particular port at the time of her loss; is that your understanding?

A. It is my understanding that she was bound to return to her own port.

(Deposition of Robert C. Goodale.)

Q. But she was going to the fishing grounds at the time of her loss? A. Yes.

Q. What was the amount of that claim, Mr. Goodale? A. I don't recollect.

Q. Approximately, to the best of your recollection?

A. It was not large, but my guess would be that it was certainly under \$100,000.

Q. The day-to-day practice that you mentioned I believe [61] you stated was embodied in the final regulations known as the resolution of October 2, 1944, did not cover any claims for the hulls of vessels. Isn't that correct, as far as the day-to-day practice is concerned?

A. Will you read the question?

Mr. Charles: I do not understand it, either.

(The pending question, as above recorded, was thereupon read by the reporter.)

The Witness: The regulations related to hulls, but excluded hulls from free protection.

Q. I understand that is true from the face of the regulation, Mr. Goodale, and I am just trying to bring out from you without trying to mislead you in any way that your general statement as to the regulations referring to the day-to-day practice, as I understand it, in the consideration of the claim, would not have covered any claims for hulls because you did not have any day-to-day practice, or you did not have enough volume on any claims for hulls to say that there had been a day-to-day practice that was being embodied in the regulation?

(Deposition of Robert C. Goodale.)

A. I refer to the day-to-day practice at present and recently. I have not at any time referred to day-to-day practice as to the handling of claims for hulls. On the contrary, I stated I believe there have only been three claims for hulls of ships asserted.

Q. That is up to the present time?

A. Yes.

Q. I wanted to make out definitely that there was no day-to-day practice on hulls because there has been no such frequency of them that you could properly say that there had been any day-to-day practice.

A. That is right.

Q. You recall, and I think you did mention in response to a question by Mr. Charles, that this regulation, embodied in the resolution of October 2, 1944, was considered and acted upon by the Executive Committee of the War Damage Corporation.

In other words, was the resolution formally adopted?

A. It was a resolution formally adopted either by the entire board or by the Executive Committee.

Q. Either one, whether it is the Executive Committee or the Board?

A. Yes.

Q. Do you recall the occasion under which that resolution was presented to the Board? That is, whether there was a particular claim that was in the hopper, so to speak, that prompted the adoption of that resolution?

A. I recollect that at that time there was pending another ship claim of the Union Oil Company.

(Deposition of Robert C. Goodale.)

Q. And that is the Montebello? [63]

A. Yes.

Q. And that was the reason, is it not a fact, that prompted the Board under yours, or somebody else's suggestion to adopt such a resolution?

A. I should say not mainly the reason, nor the occasion for its adoption.

I should say that the main reason for its adoption was the anticipated early compulsion of the Board's undertaking adjustments of Philippine claims, which was a big part of the job originally assigned to the War Damage Corporation.

One instance during its adoption and one occasion for its adoption was to clarify the record of the corporation as to its having exercised the authority committed to it by the statute to exclude certain property that had been excluded.

Q. You do not recall, then, that in the minutes of the meeting of the Board or the Executive Committee for that date, October 2, 1944, the statement was made in substance that a claim on the West Coast was put forth for the loss of a hull?

A. I think that was mentioned, and that was one of the immediate incidents or reasons for the present adoption of the resolution.

Q. Is it not a fact, Mr. Goodale, that that was the primary reason, but in an effort to try to have the resolution [64] fit in with some of the general language of the statute, the resolution itself was made in general language?

A. No, it was not.

(Deposition of Robert C. Goodale.)

Q. Under the War Damage Corporation Act, as you understand it, Mr. Goodale, and the policies that were issued following July 1, 1942, was the rolling stock of railroads covered?

A. It was.

Q. It was subject to coverage?

A. Yes, I believe it was.

Q. Did you have any claims where there was an actual loss? A. No.

Q. It was just fortunate there was no loss; is that correct?

A. As far as I know, there was no such loss.

Q. Mr. Goodale, is it your understanding that a railroad car carrying freight, even though moving from one American city to another, would be covered during the free period if it were destroyed by an enemy act?

A. That is purely a hypothetical question which the War Damage Corporation has never had occasion to pass on.

Q. Mr. Charles has asked you a question here concerning the interpretation, et cetera, of the various matters, and now I am asking you, if I may, what your understanding would [65] be of that situation that I have mentioned, whether a railroad car in a train, carrying cargo from one American city to another, would be covered if it were destroyed by an enemy attack during the free period, let us say, from December 7, 1941, to July 1, 1942, so you do not have any question about whether a policy was issued.

(Deposition of Robert C. Goodale.)

Mr. Charles: I object to the question on the ground that it is a hypothetical question and is argumentative and simply calls for the witness' opinion as to a situation that has not arisen, as distinguished from the question which I have asked which related to the interpretation of the statute by the corporation in its acts in excluding types of property and in paying certain proportions of loss. That is, questions bearing on what has been administrative interpretation of the statute are relevant in the interpretation of the statute, but questions which have not arisen are not relevant.

The Witness: In answer to your question, it depends wholly on the location of the railroad car at the time of its loss or destruction. If it was lost or destroyed while being towed on a canal boat from New York to Philadelphia, outside of the three-mile limit, I think it would not be covered, but if it were on a Pennsylvania Railroad track within the United States, I think it would be covered. [66]

Q. (By Mr. Henry): So, you would determine it solely on whether it is within the continental limits of the United States at that time?

A. Or within any of its possessions.

Q. Yes, the continental limits of the United States or its possessions.

A. Yes.

Q. Let me ask you this, Mr. Goodale: If the Lahaina, while at anchor in Honolulu Harbor, let us say, I guess it was at Aukini, before it was loaded with Cargo and before she had started her voyage, had been destroyed by a Japanese bom-

(Deposition of Robert C. Goodale.)

bardment on or about December 7, 1941, would you consider that such a vessel was covered?

Mr. Charles: Same objection.

The Witness: That is another hypothetical question representing a situation which, so far as I know, has never arisen in connection with war damage claims.

Q. (By Mr. Henry): I will ask you for your best answer that you can give us, Mr. Goodale. In your testimony here you have attempted to give us your own opinion as to what "in transit" means, and I consider this proper cross-examination in testing your experience and credibility, and in using the word credibility, I do not refer to it in its invidious sense, [67] but experience and credibility in qualifications in making such a statement as you make regarding the meaning of the words "in transit."

Mr. Charles: The same objection.

The Witness: In my opinion, such a loss would not be protected by War Damage Corporation in view of the resolution of October 2, 1944.

Q. (By Mr. Henry): But solely by reason of that resolution of October 2, 1944; is that correct?

A. I would not say solely by reason of the resolution, but also because of the duty of the War Damage Corporation to apply as a limit to authorize activities the limit of the intent of the act under which the War Damage Corporation operates.

(Deposition of Robert C. Goodale.)

Q. Then it goes back to your determination, isn't that true, of what the phrase "in transit" means?

A. What it means in the light of the legislative history of the Act.

Q. In view of the fact that the House of Representatives saw the direct question of whether or not sinkings are covered and the reply was given as yes——

A. The reply was given yes, but was referred to Mr. Bland and Mr. Bland answered no.

Q. I am talking about the sinkings. There is another [68] statement with which you agree, and that was the direct question: Does this cover the present sinkings and the answer was yes.

A. Sinkings of what?

Q. Just what was in the Congressional Record that I read to you.

A. There is nothing in the language which militates against the conclusion that seems inescapable from reading the entire legislative history. Congress definitely intended not to provide free protection for the Marine losses in general. Because of it, it made an exception as to cargoes that were in transit, and these losses before the war damage insurance could be made available.

Q. And that is solely your interpretation of the thing?

A. I would say not solely mine, but it is my interpretation.

Q. Then, Mr. Goodale, do you know what insurance, if any, was actually available through the

(Deposition of Robert C. Goodale.)

Maritime Commission on December 11 and 12, 1942, for the owners of vessels?

A. That is not within my province or purpose to answer.

Q. Your conclusion was your own opinion as to what the Congressional intent was, and consequently the manner in which you have recommended the administration of the War Damage Corporation Act to exclude hulls is not dependent upon any knowledge of what the actual situation was in December [69] of 1941 with respect to the availability of hulls war risk insurance for the owners of vessels from the United States Maritime Commission?

A. Naturally. It is not dependent entirely on the availability of insurance of the Maritime Commission because it was the clear intention of the Congress not to provide free protection where war risk insurance was available through ordinary insurance channels or private companies.

Nobody doubts that such insurance was available.

Q. I think you answered previously, Mr. Goodale, that it was your practice to pay the owners of cargo for losses during the free period, whether or not they had available to them ordinary commercial war risk insurance. Is that right?

A. My first statement on that subject was that I mentioned an exception to the general rule otherwise applicable, and I believe that exception was compelled by the Congressional Record of a ques-

(Deposition of Robert C. Goodale.)

tion and answer as to whether the losses on the cargo on the City of Atlanta were covered under the bill.

Q. And the answer was what?

A. It was, in effect, that they were covered.

Q. Is it not also true that during the free period you paid for purely land losses unconnected with any Marine enterprise or venture, assuming that the loss occurred within [70] the United States or within the territorial boundaries of the United States or its possessions?

A. I do not fully understand the question. We did not assume that any losses occurred in the United States, but where losses occurred in the United States or in its possessions, claims were laid without regard to the fact that insurance may possibly have been obtainable by paying a higher rate of premium.

Q. Did you make any investigation as to what those premium rates were?

A. I have seen a statement on that, yes.

Some of them are in the Congressional Record.

Q. It is a fact that there was available through ordinary channels, in the sense of commercial insurance, war risk insurance for damage to land structures and objects?

A. And in some locations they had very limited amounts, but in a broad way, it was not available.

Q. Upon what do you base that statement, Mr. Goodale, as far as your own personal knowledge is concerned?

(Deposition of Robert C. Goodale.)

A. It was repeatedly made in Congress, and I know of one or two companies. It has previously been stated that there were no private companies who were able to provide any real protection against large losses through bombing within the United States.

Q. Do you know what funds the United States Maritime [71] Commission had available to it for any kind of insurance that it was authorized to place on Marine risks in December of 1941?

A. As I recall it was quite a small amount, possibly as little as \$40 million or \$100 million. That has no important bearing, as I can see, on the matter that you are discussing. That is an agency of the United States Government, and its capacity to pay would not necessarily be limited to funds then available to it.

Q. It would be overcome by additional legislation; is that correct?

A. That is right.

Q. And that is the same situation with respect to the War Damage Corporation?

A. Yes,—but not as to private insurers.

Q. In other words, the War Damage Corporation presumably had the authorization of Congress, and the taxing power of the United States to supply funds?

A. That is suggested in the Congressional Record. I do not subscribe to the idea that there is any obligation on the part of the United States to furnish further funds.

(Deposition of Robert C. Goodale.)

Q. Likewise, there would be no obligation on the United States in connection with supplying additional funds to the Maritime Commission; is that correct?

A. I do not know whether that analogy applies, or not. [72] In one case there is a corporation organized to do business which ordinarily has been done by a private corporation, and in the other case there is a direct agency of the United States Government.

Your question seems to be so far afield that I am utterly at a loss to conceive its relationship to the present case.

Q. In any event, the sum and substance of it is that as far as whatever program the Maritime Commission itself had, it was not the determining factor in your mind in concluding that hulls *on* vessels were not covered?

A. It was not conclusive. It had a bearing on the intent to cover them. That is another matter, I think. There is an additional reason for their exclusion because the Government had provided at approximately the same time a different mode of meeting the same problem.

Q. What bearing, if any, on any of your losses for commercial cargo did the fact that the Maritime Commission had authority to issue policies of insurance for Marine war risks on cargoes have on the action of the War Damage Corporation in paying any losses for loss of cargo by enemy action prior to July 1, 1942?

(Deposition of Robert C. Goodale.)

A. You are speaking only of loss of cargo?

Q. Yes.

A. I don't see that it had any. [73]

Q. All right. So that even though a cargo owner during the free period—that is, between December 7 and July 1, 1942, had available to him both the commercial market of war risk insurance and the Maritime Commission for war risk cargo insurance, if such a cargo owner lost a cargo by enemy action, in transit between ports of the United States or from a port of the United States and one of the possessions of the United States and had no such commercial war risk insurance or no such insurance from the Maritime Commission, the War Damage Corporation would pay for such a loss; is that correct?

Mr. Charles: I object to the question on the same ground I heretofore mentioned, and on the additional ground that it has been asked and answered.

The Witness: Yes.

Mr. Henry: I think that is all.

Redirect Examination

By Mr. Charles:

Q. Mr. Henry referred to a passage in the Congressional Record in which Mr. Steagall had been asked a question, as to whether the Act covered certain losses, and you answered that referring to the substance of the Congressional Record that followed in which Mr. Bland was asked to answer the question by Mr. Steagall, I would like to ask

(Deposition of Robert C. Goodale.)

you if you would, for the purpose of clarifying and substantiating the [74] answer, read to us that particular testimony.

I will show you, Mr. Goodale, the Congressional Record for March 2, 1942, appearing at page 1847, and ask you if you will read to us the testimony or the statement that appears, which you have in mind:

A. "Mr. White: Does this war insurance corporation apply to cargoes and ships on the high seas?

"Mr. Steagall: Yes, under certain conditions.

"Mr. White: Then the corporation is taking direct losses in all the torpedoings of cargoes and oil tankers and things like that under the operation of this Act.

"Mr. Steagall: I yield to the gentleman from Virginia, Mr. Bland, who will make an explanation that I was going to make to the gentleman.

"Mr. Bland: Things like that are being taken care of under the War Insurance Bill which was extended today. I have just put into the basket a report on the amendments to that bill which covers every phase of the Marine liability and risk."

May I correct one answer I made?

Q. Surely.

(Deposition of Robert C. Goodale.)

A. I was asked whether that remark related to legislation to be enacted rather than legislation that had been enacted. [75]

I did not then have the Congressional Record before me, and upon reading it, I am not clear that it related wholly to legislation to be enacted, but I believe that it related also to legislation that had been enacted.

I think that is all.

Mr. Henry: I believe that is all.

Mr. Charles: That is all.

/s/ ROBERT C. GOODALE.

Subscribed and sworn to before me, this 28th day of March, A.D. 1947.

[Seal] /s/ LLOYD L. HARKINS,

Notary Public in and for the
District of Columbia.

My commission expires August 14, 1947. [76]

United States of America,
District of Columbia.

I, Lloyd L. Harkins, a notary public duly commissioned and qualified in and for the District of Columbia of the United States, aforesaid, do hereby certify that there came before me on the 17th day of March, A.D., 1947, at 10 o'clock a.m., in the office of the Reconstruction Finance Corporation, 811 Vermont Avenue, Northwest, Washington, D. C., the following-named persons, to wit:

(Deposition of Robert C. Goodale.)

Mathias W. Knarr and Robert C. Goodale, who were by me duly sworn to testify the whole truth and nothing but the truth of their knowledge touching and concerning the matters in controversy in this action, and that they were thereupon carefully examined, upon their oaths, and their examinations reduced to writing under my supervision; and that the deposition is a true record of the testimony given by the witnesses; and that the said witnesses read the same and subscribed their names thereto.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

In witness whereof, I have hereunto set my hand and affixed my notorial seal this 28th day of March, A.D. 1947.

/s/ LLOYD L. HARKINS,

Notary Public in and for the
District of Columbia.

My Commission expires August 14, 1947.

Cost \$49.10. [77]

[Defendant's Exhibit No. 1 is identical with Defendant's Exhibit A attached to Answer, and is set forth on pages 23 to 42.]

DEFENDANT'S EXHIBIT No. 2

W.D.C.—AMENDMENT TO REGULATIONS

“A” EFFECTIVE JULY 1, 1942

War Damage Corporation

Washington, D. C.

Amendment to Regulations “A”

1. Rule 10 of Regulations “A” is hereby amended to read as follows:

“Rule 10.—Policies may be issued to mortgagees or other holders of security or financial interests in property eligible for coverage under these Regulations. The rate shall be determined according to these Regulations on the basis of the coded classification of the property and risks covered and the coverage shall be subject to all the conditions of the Policy; except that, with respect to any occupancy classification to which the ‘Coinsurance’ clause contained in the Policy is applicable, if the Applicant shall so elect, the Applicant may apply for insurance to the full extent of its interest in the property described in the Application and in such case, the Application shall set forth the declared dollar amount of the Applicant’s interest in the property therein described. The rate for such coverage shall be the highest rate applicable to property under the respective coded classification as set forth in the Rate Schedule of Appendix “A.” The Fiduciary Agent shall, in any such case, attach to the Policy the following form of endorsement:

“The ‘Pro Rata Distribution’ clause and the ‘Coinsurance’ clause contained in this policy are not applicable. All other terms and conditions of this policy remain unchanged.

“(Authorized Fiduciary
Agent.)

“By -----”

“If blanket policies are issued covering mortgagee or other financial interests, the provisions of these Regulations relating to ‘Blanket Insurance’ shall apply.” (See Rule 9.)

2. The limit of coverage set forth in Rule 23 of Regulations “A” shall be inapplicable to “Furs” and “Jewelry” and such property shall be eligible for coverage without limitation. The rate for such coverage shall be the rate applicable to the appropriate coded classifications in lieu of the rate set forth under Occupancy Code 15 in the Rate Schedule of Appendix A.

3. Regulations “A” are hereby amended by adding thereto the following rule:

“Coverage for Standing Timber

“Rule 26.01—Standing timber may be specifically covered, provided the Application (WDC Form No. 2) or the Schedule attached thereto sets forth separately the description, location and amount of coverage of the standing timber to be so covered. No limit of coverage shall be applicable. The rate for such coverage shall be 15 cents, with 100% coinsurance mandatory. In any such case the Fiduciary Agent shall attach to the Policy the following form of endorsement:

“This policy is hereby extended to cover the standing timber described in the Application (and the Schedule, if any) which is attached to this policy. All other terms and conditions of this policy remain unchanged.”

“-----

(Authorized Fiduciary
Agent.)

“By -----”

4. Rule 26 of Regulations “A” is hereby amended to read as follows:

“Rule 26—Growing crops and orchards may be specifically covered provided the separate form of Application for insurance covering growing crops and orchards is completed by the Applicant, such coverage to be at the following graduated rates: 5c for the first \$100,000, 7½c for the second, 10c for the third, 12½c for the fourth, and 15c for all coverage in excess of \$400,000; with no coinsurance requirements or credits being applicable.”

DEFENDANT'S EXHIBIT No. 3

W.D.C.—AMENDMENT TO REGULATIONS

“A” EFFECTIVE OCTOBER 1, 1942

War Damage Corporation
Washington, D. C.

Amendments to Regulations “A”

Regulations “A” are hereby amended by adding thereto the following Rule:

“Registered Mail or Express Coverage for Money and Securities (Occupancy Code 18)

“Rule 26.02—Money and Securities may be covered under the Policy while in transit by Registered Mail or Express (including Registered Airmail and Air Express) provided the separate form of Application (WDC Form No. 15) for such Registered Mail or Express coverage is completed by the Applicant. The terms ‘Money’ and ‘Securities’ are defined in Item 5 of said Application and the coverage limitations are set forth in Condition (b) appearing on the reverse side of said Application. The premium for such coverage will be computed on the basis of the declaration of maximum estimates of aggregate values of shipments of Money and Securities by the Applicant for the full period of twelve months from the effective date of the insurance and adjustment will be made at the end of the term of the Policy based upon the written report of the total values of Money and Securities actually shipped by the Applicant during such term, all as described in Condition (f) appearing on the reverse side of said Application. The rates for such coverage are set forth in Item 3 of said Application, as follows: For Money, 3c per \$1,000 of total aggregate declared value; for Securities, 1c per \$1000 of total aggregate declared value. Coverage is provided with respect to both of the following: Class A—Shipments made by, to, or for the account of the Applicant; Class B—Shipments by the Applicant for the account of others. Class B coverage is optional. Class B coverage cannot be obtained without Class A coverage. The limits of liability are \$500,000 for Money and \$2,000,000 for Securities with respect to

any one shipment to any one consignee on any one day. The 'Pro Rata Distribution' clause and the 'Coinsurance' clause contained in the Policy are not applicable and all other terms and conditions of the Policy are to be considered amended and modified to the extent necessary to conform to the provisions of said Application."

DEFENDANT'S EXHIBIT NO. 4

MINUTES OF A MEETING OF THE EXECUTIVE COMMITTEE OF WAR DAMAGE CORPORATION

October 2, 1944

A meeting of the Executive Committee of War Damage Corporation was held at 811 Vermont Avenue, N. W., Washington, D. C., at 12:30 p.m., Monday, October 2, 1944, in accordance with Paragraph 5 of the By-Laws.

Present: Directors: Mr. Klossner, president, presiding; Mr. Husbands, Mr. Mulligan, Mr. Knarr, secretary.

Leo Nielson, assistant secretary, Reconstruction Finance Corporation, also was present.

Mr. Klossner suggested that, before beginning the investigation of the principal group of claims for which the Corporation is charged with responsibility (i.e., those arising in the Philippine area), it may be advisable to consolidate and clarify the Corporation's record with respect to the protection extended in connection with losses occurring before

July 1, 1942. Mr. Klossner called the attention of the Directors to the following matters:

That on December 13 and December 22, 1941, the Board of Directors of this Corporation approved two press releases of the Federal Loan Administrator which announced that reasonable protection would be provided by this Corporation with respect to loss of or damage to property resulting from enemy attack, and expressly excluded from such protection certain classes of property;

That on June 3, 1942, the Board of Directors and the Secretary of Commerce approved (1) Regulations "A" of this Corporation, which excludes certain classes of property and risks from protection under insurance issued pursuant to Section 5g of the Reconstruction Finance Corporation Act, as amended, including the classes of property mentioned in the press releases theretofore issued by the Federal Loan Administrator, and (2) WDC Forms Nos. 1, 2, 3, 4, 5, 6, and 7, which exclude from protection under policies issued pursuant to subsection "(a)" of Section 5g of the said Act certain classes of property and risks, including all cargoes on ocean-going, coastwise, inter-coastal or overseas vessels, whether in United States ports or otherwise;

That immediately upon the first employment of adjusters to investigate claims filed with the Corporation for compensation for losses occurring after December 6, 1941 and before

July 1, 1942, this Corporation, by authority of the Board, and with the approval of the Secretary of Commerce, issued instructions to such adjusters to the effect that the classes of property and risks theretofore excluded, either conditionally or unconditionally, under the terms of this Corporation's regulations and official forms of policies and of applications for insurance, had been excluded from the protection authorized by subsection "(b)" of Section 5g of the Reconstruction Finance Corporation Act, as amended.

Mr. Klossner stated that a question recently had been raised by a claimant as to whether this Corporation might be under legal obligation to make compensation for the hulls, equipment, and cargoes of vessels lost by enemy attack while enroute between ports of the United States and foreign ports, if such vessels were destroyed within three miles of the shores of the United States. Mr. Klossner indicated that although the Act (Public Law No. 506—77th Congress) defining the scope of the War Damage Corporation's authority specifically limits liability on property in transit "to such property in transit between any points located in any of the foregoing" and, consequently, could not, under any circumstances, be held to apply in the instance referred to, a clarification of the Board's action regarding various classes of property was desirable. Mr. Klossner then recommended that, in order more clearly to set forth the intent of the Corporation

and to put at rest any doubt as to the Corporation's having fully exercised, to the extent presently advisable, its statutory authority to exclude from the protection authorized by Section 5g of the Reconstruction Finance Corporation Act, as amended, the classes of property and risks intended by the Board to be so excluded, and which have, in fact, been excluded from compensation throughout the existence of this Corporation, the Executive Committee adopt the Resolution hereinafter set forth. After discussion, the Executive Committee reserved for further consideration the question of the advisability of excepting from protection under the said Act the property of foreign nationals within the Philippine Islands, and the question of excepting from such protection all property requisitioned by the United States or any agency thereof, as well as the advisability of any other or further exceptions from such protection.

Thereupon, the Executive Committee adopted the following resolution, which bears the approval of the Secretary of Commerce, as required by Section 5g of the Reconstruction Finance Corporation Act, as amended March 27, 1942 (Public Law 506—77th Congress):

“Be It Resolved, That War Damage Corporation, deeming advisable the following general exceptions to the protection authorized under Section 5g of the Reconstruction Finance Corporation Act, as amended (Public Law No. 506, 77th Congress)

“1. Does except from such protection (a) all accounts, bills, currency, deeds, evidences of debt,

securities, money, bullion, stamps, precious and semiprecious stones, works of art, antiques, stamp and coin collections, manuscripts, models, curiosities, objects of historical and scientific interest, pleasure water-craft and pleasure aircraft, and standing timber, not specifically listed or designated as insured under a policy of insurance issued by this Corporation; (b) all property interests of an 'enemy' or an 'ally of an enemy' as defined in the Trading with the Enemy Act, as amended, or of an alien enemy, whatever resident, or of any person or persons, real or juridical, whose names are contained in the Proclaimed List of Certain Blocked Nationals, as amended, unless legally protected under a policy of insurance issued by this Corporation; (c) all furs and jewelry not specifically listed or designated as insured under a policy issued by this Corporation, except furs and jewelry of any claimant or policyholder to an aggregate value not exceeding \$1,000.

"2. Does except from any and all protection under said Act the following:

- (a) all intangible property (other than securities insured under a policy of insurance issued by this Corporation);
- (b) all real property (other than standing timber, growing crops and orchards) not a part of a building or structure;
- (c) all cargo on ocean-going, coastwise, intercoastal, or overseas vessels, whether in the ports or inland or coastal waters of the United States, the Philippine Islands, the

Canal Zone, or the Territories or possessions of the United States or otherwise (except cargo damaged or destroyed before July 1, 1942, by enemy attack while in transit between points located in any of the foregoing), and all goods and property which are or have been diverted to, detained at, or unloaded, landed, or stored within, the United States, the Philippine Islands, the Canal Zone, or the Territories or possessions of the United States while in transit by sea to or from a foreign port, so long as such goods shall be detained or prevented from proceeding to their ultimate destinations as designated in the applicable ocean bills of lading, or shipping documents;

- (d) all vessels and water-craft wherever situated (and their tackle, apparel, fittings, equipment, stores, ordnance, boilers and machinery), other than (a) vessels used exclusively for storage, housing, manufacturing or generating power, (b) vessels while under construction, until delivery by the builder or sailing on delivery or trial trip, whichever shall first occur, and (c) pleasure water-craft while laid up afloat or ashore, which are subject to protection within the limits indicated in paragraphs 'I' and 'E' of this resolution;
- (e) all loss or damage caused directly or indirectly by neglect of the insured, or of the

claimant (as the case may be) to use all reasonable means to save and preserve the property after damage;

- (f) all interest of foreign nationals in property located, at the time of loss, otherwise than within the United States, the Canal Zone, or the Territories or possessions of the United States;
- (g) all other classes of property heretofore generally excepted by this Corporation, with the approval of the Secretary of Commerce, from the protection authorized by said Act; all claims with respect to which notice of loss and proof of claim have not been or shall not be presented to and filed with this Corporation in accordance with its regulations as from time to time promulgated and in effect; and all claims not proved and established to the satisfaction of the Corporation; the Corporation reserving the right to except from the protection authorized by the Act such other classes of property as it shall deem advisable.

“Be It Resolved Further, That

- A. All property insured against war risks by insurers other than this Corporation be, and the same is excepted from protection under the said Act in any amount greater than the excess of the fair cash value of such property over and above the amount of such other insurance, whether collectible or not.

- B. Works of art, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, and objects of historical or scientific interest owned by commercial dealers, cultural institutions or persons who keep the same open for public display, are excepted from protection under the said Act otherwise than in an amount not exceeding \$25,000 for any one article of any of the classes in this paragraph 'B' described, as well as conditionally excepted from protection as provided in paragraph '1' of this resolution.
- C. Furs, jewelry, works of art, antiques, stamp and coin collections, manuscripts, books and printed publications more than 50 years old, models, curiosities, and objects of historical or scientific interest, when privately owned and not open for public display, are excepted from protection under the said Act otherwise than in an amount not exceeding \$5,000 for any one article of any of the classes in this paragraph 'C' described, and not exceeding a total of \$10,000 for any one interest with respect to any or all of the aforementioned classes of property wherever located, as well as conditionally excepted from protection as provided in paragraph '1' of this resolution.

- D. Records, accounts, plans, drawings and formulae are excepted from protection under the said Act otherwise than in an amount not exceeding \$10,000 for any one film, copy, record, account, plan, drawing or formula, as well as conditionally except from protection to the extent provided in paragraph '1' of this resolution.
- E. Pleasure water-craft while laid up afloat or ashore and pleasure aircraft are excepted from protection under the said Act otherwise than in an amount not exceeding \$10,000 for any one craft, as well as conditionally excepted from protection as provided in paragraph '1' of this resolution."

The approval of the Secretary of Commerce referred to follows:

"Pursuant to the provisions of Section 5g of the Reconstruction Finance Corporation Act, as amended, I hereby approve the general exceptions to the protection made available under said Act, as set forth in the foregoing resolution.

"Dated this 2nd day of October, 1944.

/s/ "JESSE H. JONES,
"Secretary of Commerce."

Thereupon the meeting adjourned.

[Seal] M. W. KNARR,
Secretary.

DEFENDANT'S EXHIBIT NO. 5

Immediate Release

RFC-1718

The Secretary of Commerce
Washington

December 30, 1942

Jesse Jones, Secretary of Commerce, today announced that War Damage Corporation will investigate claims for loss of property in transit between any points located in the United States, and the Canal Zone, and the Territories and possessions of the United States with the exception of the Philippine Islands. All claims for loss of property in transit between such points which resulted directly from enemy attack between December 6, 1941 and July 1, 1942 should be filed with the Washington office of War Damage Corporation on or before February 1, 1943. Investigation of such claims will be conducted in accordance with the provisions of Section 5g of the Reconstruction Finance Corporation Act, as amended.

All claimants are notified that, notwithstanding the investigation, War Damage Corporation reserves the right, in accordance with the statute and the regulations issued thereunder, to determine whether or not the Corporation is liable.

(Copy)

[Endorsed]: Filed April 1, 1947.

PLAINTIFF'S EXHIBIT NO. 1.

Agreement between various Steamship Companies and the National Maritime Union of America, an Affiliate of the C.I.O. in its own behalf and in behalf of the Unlicensed Personnel for whom the National Maritime Union has been certified by the National Labor Relations Board as the agent for collective bargaining, employed on the various Companies' vessels registered under the American flag.

Expiration Date: September 30, 1941.

* * * * *

Section 29. Transiting Canals. When transiting canals, such as the Panama, Manchester, etc., men on their watch below who are required on deck for the purpose of handling lines, or standing by winches, etc., shall be paid the regular rate of overtime. On Saturday afternoons, Sundays, and holidays, overtime shall be paid all men required on deck standing by winches or handling lines.

* * * * *

[Endorsed]: Filed April 30, 1947.

[Endorsed]: No. 11925. United States Circuit Court of Appeals for the Ninth Circuit. Matson Navigation Company, a Corporation, Appellant, vs. War Damage Corporation, a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed May 7, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11925

MATSON NAVIGATION COMPANY,
a Corporation,

Plaintiff and Appellant,

vs.

WAR DAMAGE CORPORATION, a Corporation,
Defendant and Appellee.

STATEMENT OF THE POINTS UPON
WHICH THE APPELLANT INTENDS TO
RELY ON THE APPEAL IN THE ABOVE-
ENTITLED CAUSE

Appellant, Matson Navigation Company, a corporation, hereby designates the following points upon which it intends to rely on the appeal of the above-entitled cause:

1. The District Court erred in finding that the American steamship Lahaina at the time of her loss was not property "in transit" within the meaning of the amendment of March 27, 1942, to the Reconstruction Finance Corporation Act, to wit: within the meaning of Section 5g thereof.
2. The District Court erred in concluding that Section 5g of the Reconstruction Finance Corporation Act, as amended on March 27, 1942, was not intended to, and did not, afford protection to seagoing ships, such as the

American steamship Lahaina, in transit on a voyage between a port or ports of the Hawaiian Islands and a port of the continental United States.

3. The District Court erred in failing to conclude that plaintiff was entitled to recover judgment from defendant in the principal sum of \$615,000.00 in accordance with its finding of fact that the reasonable value of the steamship Lahaina at the time of her loss was the said sum of \$615,000.00.

Dated: May 7, 1948.

/s/ HERMAN PHLEGER,
/s/ MAURICE E. HARRISON,
/s/ GREGORY A. HARRISON,
BROBECK, PHLEGER &
HARRISON.

/s/ LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Appellant.

Service of the within statement and receipt of a copy is hereby admitted this 7th day of May, 1948.

/s/ ALLAN E. CHARLES,
LILLICK, GEARY, OLSON,
ADAMS & CHARLES,
Attorneys for Appellee.

[Endorsed]: Filed May 7, 1948.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION DESIGNATING PORTIONS
OF THE RECORD ON APPEAL TO BE IN-
CLUDED IN PRINTED RECORD ON
APPEAL

It Is Hereby Stipulated and Agreed that the following portions of the record on appeal shall be included in the printed record on appeal in the above-entitled cause, the page references being to the certified copy of the record on appeal:

1. Complaint of Matson Navigation Company, including the Exhibit thereto, pages 1 to 5, inclusive.

2. Answer of War Damage Corporation, including all Exhibits thereto, pages 6 to 20, inclusive, it being hereby stipulated that Exhibit "C" to said Answer is a full, true and correct copy of Defendant's Exhibit No. A introduced in evidence at the trial of said cause which said Exhibit No. A is, therefore, not designated to be reprinted.

3. Stipulation Amending Answer of War Damage Corporation, pages 21 and 22.

4. All stenographically reported proceedings appearing in the Reporter's Transcript of the trial.

5. All testimony taken by deposition and annexed Exhibits, to wit:

- (a) Deposition of Hans O. Matthiesen;
- (b) Deposition of George Inselman;
- (c) Deposition of M. M. Pease;
- (d) Deposition of Howard W. Cann;

- (e) Deposition of Harold L. Wayne;
- (f) Deposition of Matthias W. Knarr; and
- (g) Deposition of Robert C. Goodale.

6. Stipulation relative to value of steamship "Lahaina," page 25.

7. Stipulation that Plaintiff had no war risk insurance, page 26.

8. Stipulation relative to New York Journal of Commerce article and annexed Exhibit, pages 27 to 30, inclusive.

9. Opinion of District Court, pages 33 to 46, inclusive.

10. Minute Order of District Court for Judgment dated November 17, 1947, page 47.

11. Copy of Notice of Entry of Opinion, page 48.

12. Minute Order of District Court dated December 12, 1947 that Findings of Fact and Conclusions of Law be filed, page 62.

13. Findings of Fact and Conclusions of Law signed by District Court, pages 63 to 66, inclusive.

14. Judgment, pages 67 and 68.

15. Notice of Entry of Judgment, page 73.

16. Notice of Appeal, pages 74 and 75.

17. Designation of Contents of Record on Appeal, pages 80 and 81.

18. Copy of cover page and of section 29 on page 34 of Plaintiff's Exhibit 1.

19. Order of District Court extending time to file record on appeal and to docket appeal dated March 4, 1948, page 82.

20. Order of District Court extending time to file record on appeal and to docket appeal dated April 7, 1948, page 83.

21. Order of District Court for Transmission of original Exhibit to Clerk of the Circuit Court of Appeals, page 84.

22. Plaintiff and Appellant's Statement of the Points on which it intends to rely on appeal filed herein on May 7, 1948.

23. This Stipulation designating portions of the Record on Appeal to be printed.

Dated: May 12, 1948.

/s/ HERMAN PHLEGER,
/s/ MAURICE E. HARRISON,
/s/ GREGORY HARRISON,
BROBECK, PHLEGER &
HARRISON.

/s/ LYMAN HENRY,
HALL, HENRY & OLIVER,
Attorneys for Plaintiff and
Appellant.

/s/ IRA S. LILLICK,
/s/ ALLAN E. CHARLES,
/s/ EDWARD D. RANSOM,
LILLICK, GEARY, OLSON,
ADAMS & CHARLES,
Attorneys for Defendant and
Appellee.

[Endorsed]: Filed May 12, 1948.

